

August 10, 1998

To: Board of Governors
From: Division of Consumer and Community Affairs (Helen M. Troy & Tracy K. Anderson) *HMB*

Subject: Application by NationsBank Corporation, Charlotte, NC, to acquire BankAmerica Corporation, San Francisco, CA

RESTRICTED

Summary of Issues

NationsBank Corporation, Charlotte, NC ("NationsBank" - consolidated assets of \$308 billion) proposes to acquire BankAmerica Corporation, San Francisco, CA ("BankAmerica" - consolidated assets of \$264 billion). The resulting corporation, which will take the name BankAmerica Corporation (consolidated assets of \$572 billion), will operate banking offices in 26 states and the District of Columbia. It will become the largest bank in the United States.

At issue are comments from more than 1,600 organizations and individuals. Slightly more than one-half of the comments expressed support of this proposal and slightly less than one-half opposed it or suggested ways in which to improve the transaction. While comments were received from groups, small businesses, individuals, and public officials from many areas across the country, the majority of the comments submitted came from California. Most of the comments opposing this proposal criticized one or both organizations' CRA record and/or lending performance, both with respect to home mortgage lending and small business lending. California commenters objecting to this transaction generally praised Bank of America's commitment to its communities and criticized NationsBank as being dedicated to generic products and alleging

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that its CRA and HMDA records were deficient. Commenters also expressed concerns typical of larger mergers, including the perceived loss of local control and understanding of local needs, job loss, loss of competition, branch closings, and increasing fees attended by a decrease in service, particularly in already underserved areas.

At the time of filing this application, NationsBank had 10 depository subsidiaries and BankAmerica had five subsidiaries subject to CRA. Seven of NationsBank's subsidiaries, representing 97.5% of banking assets, were rated "Outstanding" at their most recent CRA examination and all of BankAmerica's subsidiaries subject to were rated "Outstanding" at their most recent CRA examination. NationsBank's other three subsidiaries were rated "Satisfactory" for CRA.

Staff reviewed the extensive material NationsBank submitted in connection with this proposal, the CRA performance of both organizations, and the HMDA and CRA lending records of both organizations for 1995 through 1997. (See the separate supplemental book containing HMDA and CRA summary charts and detailed lending tables available in the Secretary's Office, the Division of Bank Supervision and Regulation, the Legal Division, and the Division of Consumer and Community Affairs.) In addition, staff reviewed the branch closure information which NationsBank was required to submit in connection with its acquisitions of Boatmen's Bancshares in 1996 and Barnett Banks, Inc., in 1997.

Given the strong CRA records of both organizations, NationsBank's responses to commenters' criticisms, and staff's retrospective review of NationsBank's branch closings in markets acquired during the past two years, staff does not believe that negative comments submitted in connection with this application should preclude approval. Nevertheless, staff recommends that, as a condition for approval, the Board require NationsBank to report branch closures occurring as a result of this proposal.

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to the Federal Reserve System for the two-year period after consummation as part of its next applications to acquire a depository institution. For branches closed in LMI areas, staff recommends that NationsBank indicate the proximity to the nearest surviving branch and the steps taken to mitigate the impact of the branch closure.

Recommendation **Approval with branch closure reporting requirements.**

Discussion

Interest in this proposal was substantial. In recognition of the extent of public interest, the Board held a public meeting in San Francisco, CA, on July 9, and 10, 1998, to allow the interested parties the opportunity to present oral testimony regarding this transaction. More than 170 individuals testified at the meeting. Most repeated comments which they had already submitted in writing, and a few elaborated on their prior comments.

In all, more than 1,600 organizations and individuals submitted comments in connection with this proposal.¹ More than 850 comments were submitted by supporters of the proposal and more than 800 comments

¹ As a general matter, there were a number of umbrella groups which submitted material, with numerous individuals and affiliated groups submitting the same letter, or a slightly modified version of the letter. Major groups included California Reinvestment Committee ("CRC"), San Francisco, CA, Greenlining Institute ("Greenlining Institute"), San Francisco, CA, National People's Action ("NPA"), Chicago, IL, Community Reinvestment Association of North Carolina ("CRA*NC"), Raleigh, NC, North Carolina Fair Housing Center ("NCFHC"), Raleigh, NC, The Coalition ("Florida Coalition"), an umbrella group including the African-American Chambers of Commerce, Black Business Associations, Black Business Investment Corporations in the State of Florida, and Concerned Citizens Political Action, Tallahassee, FL, National Association of Development Organizations ("NADO"), Washington, DC, Inner City Press/Community on the Move ("ICP"), Bronx, NY, Consumers Union ("Consumers Union"), San Francisco, CA, Texas Community Reinvestment Coalition ("Texas CRC"), Dallas, TX, CANICCOR ("CANICCOR"), San Francisco, CA.

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either criticized some aspect of the proposal or suggested ways to enhance the benefit to the communities affected. A number of public officials, including members of Congress, submitted comments, both in favor and in opposition to this application. In addition, several individuals and small businesses submitted comments which appeared to be based on what they considered to be inappropriate handling of one or more accounts by the banks.²

The majority of the negative comments received were from California, however, comments critical of the proposal came from numerous areas across the country, including several areas in which neither organization has a depository presence.³ Many of the comments expressed concerns typical of large mergers, including the perceived loss of local control and interest in local communities, job loss, executive compensation, management diversity, loss of competition, commitment to minority vendor

² Of approximately twelve letters whose objections appeared to arise from customer complaints, four involved mortgage loan payment problems (all with NationsBank's subsidiaries), one involved difficulties with NationsBank's handling of both deposit and loan accounts, three were from disappointed small businessmen, of which one had apparently attempted to secure financing from Bank of America, one was unable to obtain a loan from NationsBank, and one was from an entrepreneur who had been unsuccessful in obtaining an equity investment in his company from NationsBank and who subsequently attempted to convince the OCC to require NationsBank to make the investment, one company alleged that NationsBank had reneged on a commitment on one of its properties in Tennessee and claimed to be in litigation, but NationsBank responded that it had no knowledge of such an action, one individual claimed that BankSouth, which was acquired by NationsBank, had defrauded him of his shares of stock and that neither BankSouth nor NationsBank would rectify the matter, and one alleged that Bank of America had violated "numerous sections" of the Uniform Commercial Code and demanded \$11.5 million. In addition, one individual's comments apparently stemmed from his inability to interest either organization in his proposals for CRA product development utilizing women- and minority- owned banks for providing credit to minority and underserved communities.

³ Staff notes that CRA applies to depository institutions in areas where the institution has a branch office. It does not generally apply to areas where there is no depository branch presence.

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purchasing programs, and branch closings⁴ In addition, concerns raised included critiques of the CRA records, programs, and performance of one or both organizations, the HMDA and CRA lending records of the organizations, and the commitment of one or both organizations to initiatives such as rural services, community development, and affordable housing

As a general matter, individuals and groups in Bank of America's existing communities expressed concerns that NationsBank has little or no experience in serving communities as racially diverse as those in Bank of America's markets, and that housing and other community needs differ significantly from those which NationsBank is used to serving Several groups charged that one or both organizations do not currently serve the needs of their existing communities, concluding that the proposal should either be denied or that NationsBank must provide a plan for improving its performance prior to approval A few groups in NationsBank's existing communities alleged that service and the types of products available deteriorated after NationsBank acquired a local institution

Although NationsBank announced a \$350 billion CRA pledge in May, 1998, various groups criticized the pledge for being too general, many groups requested specific details regarding how the pledge funds would be allocated among the states and individual localities and they requested that the pledge target low- and moderate-income individuals and areas, and specific types of programs Some groups believed the pledge to be insufficient, even representing a decline from present CRA program levels, a number of groups requested that the new organization at least commit to

⁴ Staff notes that job loss, minority vendor purchasing programs, executive compensation, and management diversity are outside the purview of the Federal Reserve In addition, staff notes that NationsBank and Bank of America overlap only in certain markets in Texas and New Mexico For a discussion of competition, see the Division of Research and Statistics' memorandum

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funding programs at existing levels, if not to increase them. Numerous groups requested that NationsBank be required to enter into CRA agreements with groups in every state and locality in which it will operate and that the CRA agreements and the pledge be incorporated into the application and enforced by the supervisory agencies.

Supporters

The Federal Reserve System received more than 850 comment letters supporting this transaction submitted on behalf of organizations, small businesses, and public officials. Most of the letters were from organizations which had in some way benefitted their association with one or both institutions. Organizations and groups praised NationsBank's and/or BankAmerica's participation in affordable housing, mortgage lending, small business investment and lending, and philanthropic activities. Supporters included a member of the U.S. House of Representatives, mayors of several cities, including Charlotte, NC, Baltimore, MD, Richmond, VA, Houston, TX, and Atlanta, GA, and state senators and representatives from Arkansas, Texas, Florida, and North Carolina. Other groups supporting this proposal included the National Association for the Advancement of Colored People, the National Urban League, Local Initiatives Support Corporation ("LISC"), ACORN Housing, Neighborhood Assistance Corporation of America ("NACA"), the San Francisco Chamber of Commerce, and community development organizations, non-profit organizations, and small businesses in North Carolina, Texas, Florida, and New Mexico.

Post Merger Service

Concerns

Several groups charged that NationsBank would increase fees, reduce

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services, and close branches in order to cut costs to pay for the acquisition. Groups and individuals also expressed the concern that the loss of BankAmerica's headquarters in San Francisco would result in the loss of staff knowledgeable about local conditions, the loss of local decision-making authority, and consequently, that the new organization would be less responsive to local needs and issues. Commenters alleged that NationsBank is known for offering generic products, regardless of their suitability to a particular community. Characterizing the needs of California and other areas as unlike the communities now served by NationsBank, particularly with respect to population diversity and critical needs for multi-family affordable housing, commenters questioned NationsBank's ability to serve Bank of America's communities and requested that NationsBank commit to retaining local decision-making authority and autonomy. Several commenters complained of service disruptions which had occurred in connection with NationsBank's previous acquisitions.

Consumers Union ("Consumers Union"), Washington, DC, expressed concern that mergers be structured to ensure that competition is enhanced, that safety and soundness of the financial system is not compromised, and that the new entity is effectively regulated, cautioning that deals deemed "too big to fail" exposed taxpayers to potential risks. Consumers Union noted that other mergers in California had resulted in consumer confusion and inconvenience while systems were being integrated. The group also requested that as a condition for the merger, that NationsBank make a number of guarantees to consumers. For example, Consumers Union requested that all out-of-state entities, such as NationsBank, commit to comply with all consumer laws in the states in which they will operate to ensure that consumers get the benefit of their own state's laws. In addition, Consumers Union requested that NationsBank adopt strong

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consumer safeguards on retail sales activities and agree to be responsible for losses arising from the violation of the safeguards, citing the lawsuit involving NationsBank's sale of mutual funds ⁵

NationsBank's Response — NationsBank maintained that this merger have a positive impact on the customers and communities of both organizations NationsBank indicated that the increased size of the combined organization allows it to make the \$350 billion 10-year pledge, which is designed to provide development equity, absorb significant product and program development costs, support extensive consumer education and counseling programs, and provide grants to local non-profit community development organizations

NationsBank stated that the proposed transaction does not pose the same level of execution risk as did the in-market mergers cited by Consumers Union, since the two franchises overlap in only a few markets in Texas and New Mexico, and indicated that it has considerable experience and success in managing operational mergers NationsBank noted that the merged organization does not expect to immediately merge its subsidiary banks, consequently, the subsidiary banks are expected to operate as separate financial institutions for the near future and their separate call centers will continue to service their respective customer bases

NationsBank stated that the transaction will result in an expanded array of products and services available to consumers The combined organization will be able to provide consumers with the largest retail branch network in the country, as well as the largest and most extensive ATM network, extensive bank-by-mail, PC home banking, bank-by-phone,

⁵ This case, cited by several groups involved a recent settlement between NationsBank and NationsSecurities and the SEC and NASD The case involved allegations of deceptive and misleading sales of securities on bank premises, mostly to elderly investors, and impermissible referrals and fees

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and TV banking services NationsBank indicated that the merged organization will review products and services to identify the best from both organizations, with the intention of making them available to customers in a standard form throughout the combined franchise However, NationsBank noted that there may be some regional differences in account offerings, and that interest rates and other service fees would be modified to reflect local competitive, economic, and regulatory conditions

NationsBank maintained that both organizations recognize that retail banking must have a local focus to be successful, and that they recognize the importance of their local markets and small- and medium- sized customers Serving these customers will be the merged organization's core business, with customer service being the focus NationsBank indicated that local branch officers will retain substantial autonomy and responsibility for ensuring that the needs of their customers are fully met Local autonomy will also extend to the community investment program Broad policy goals will be established to ensure consistency throughout the organization and the two components (NationsBank and BankAmerica) will continue their practices of seeking community input in establishing internal local goals for community development lending and investment To further ensure sensitivity to local community needs, the new organization will continue the current practice of both companies of hiring community development associates from local community-based organizations

NationsBank stated that its community development efforts are largely managed locally and differentiated based on local market needs Following the merger, NationsBank indicated that there will continue to be substantial local management of the community investment and philanthropic activities of the combined organization in the existing Bank of America markets, such as California

Both NationsBank and BankAmerica believe that their compliance with

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applicable state consumer protection laws is exemplary, noting that federal law already mandates that branches of an interstate national bank comply with the consumer protection laws of the host state as if it were an in-state bank

NationsBank believes that concerns regarding the sale of non-deposit investment products are already addressed by several federal and state laws and regulations in place, as well as the Interagency Statement on Retail Sales of Nondeposit Investment Products, all enforced by the applicable state and federal agencies. Further, NationsBank indicate that it had developed and implemented a set of principles designed to protect the privacy of customer information

*Banking Products and
Services*

Several groups criticized one or both banks for not having low-cost checking accounts for low-income individuals, for not having accounts for Social Security or other public benefits recipients, and for not having specific products to benefit particular populations, such as persons with disabilities. Consumers Union requested that NationsBank commit not to increase the fees or minimum balance requirements or to introduce new fees on existing products or services for a "reasonable period of time," believing that such a commitment would benefit consumers having limited banking choices due to resource constraints or geography. This group also requested that NationsBank dedicate a "significant proportion" of the projected cost savings from the merger for the first five years after the merger to increase access to banking services for low-income consumers to ensure that more consumers are not excluded from the banking system as a result of the merger

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NationsBank's Response — NationsBank provided information regarding the low-cost deposit products offered by the banking companies. Both NationsBank and BankAmerica have products which lower income customers could use. NationsBank's low-cost product, Economy Checking, requires an opening balance of \$25, allows one additional order of checks each year at no cost, and has a monthly maintenance fee between \$5 and \$6 (depending on the market). The monthly maintenance fee can be waived if the customer maintains a minimum balance of \$100 and has direct deposit of funds from some other source, such as a paycheck or Social Security. Transactions are limited to 7-12 (depending on the market) checks/other debits, including ATM withdrawals, with each additional debit incurring a charge of \$0.50 or \$0.75.

BankAmerica has a Limited Checking account available in California, which allows for ten checks per month, two branch visits, and unlimited ATM usage. This account costs the customer \$4.50 per month, but the with direct deposit, the fee decreases to \$2.50 per month. Excessive checks will cause the customer to be charged an additional \$4.50 per month. BankAmerica's Versatel products is offered in several of its states. In some states it is free and allows for unlimited ATM transactions, with a fee charged if the customer uses a teller. BankAmerica offers this product in California for \$5.50 per month, but the account is free with direct deposits and there is a \$2 charge for more than two teller transactions.

BankAmerica also offers a line of loan products for the disabled which allow for the purchase and/or retrofitting of vehicles, personal property, and homes. Products include auto loans, personal loans, home equity loans and offer customers longer terms than standards products. BankAmerica maintains an Americans with Disabilities Act ("ADA") officer to act as a liaison between community groups representing individuals having disabilities, and provides toll-free 24-hour customer service lines for

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customers with disabilities to provide up-to-date information on all BankAmerica products, services, and account information. In addition, BankAmerica offers four separate toll-free 24-hour TDD lines for deposit information, loan-by-phone, real estate, and credit card products. All TV ads are close-captioned. Disabled customers may also take advantage of BankAmerica's Pay by Phone and Home Banking programs. Pay by Phone is offered in large print and audio cassettes.

NationsBank and BankAmerica are both actively involved in the planning and implementation of an electronic funds transfer ("EFT") project, EFT 99, with the U.S. Treasury Department, consumer advocacy and financial services industry groups regarding the design and implementation of EFT 99. NationsBank also noted that both banking organizations work closely with many state and county entities on their electronic benefits transfer ("EBT") programs.

NationsBank stated that the newly combined organization will continue to assist both federal and state governments with implementing EFT and EBT programs, noting that NationsBank had recently announced that it will participate in the EFT 99 program in Texas. NationsBank noted that final regulations for implementing EFT 99 have not yet been issued, consequently, specific information regarding product and delivery plans is unavailable at this time. NationsBank indicated that the combined organization will have more than 4,800 branches in 22 states and more than 14,700 ATMs nationwide, which will be available to use without incurring access fees. NationsBank stated that the new organization will offer a full array of products and services which will include products that address the needs of government benefit recipients.

NationsBank asserted that it is unwarranted to assume that the merger will lead to higher fees or inferior banking products or services. NationsBank maintained that communities which it had entered through

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acquisition in recent years have found that large banks have the financial resources to provide benefits through

- technology, which makes banks more efficient and convenient,
- constant flow of new products,
- specialty niche lending (pointing out that NationsBank is one of the largest church lenders in the country), and
- fee reductions made possible by economies of scale

NationsBank stated that both organizations recognize the value of sharing cost savings, realized through consolidations, with their customers, and that lower fees result in increased customer retention and new accounts. In addition, NationsBank indicated that it had recently had passed on the cost savings to five million individual deposit customers by eliminating a number of fees and freezing monthly fees on its two most popular checking accounts through the year 2000, as well as by eliminating debit card and counter item fees. After the merger, NationsBank noted that customers would have access to a combined total of 15,000 ATMs at no charge. NationsBank explained that over time, the new bank would review its wide array of product features and would increase or decrease these features as dictated by prudent business judgement, but that precise long-term changes in fees were difficult to predict at this time.

Branch Closures

Commenters expressed general concerns that the acquisition of BankAmerica would result in branch closings and attendant reductions in service, particularly in urban and rural LMI areas. A number of groups cited what they believed to be NationsBank's history of closing branches, alleging that NationsBank uses cost savings from branch closures to finance acquisitions, and asserting that the branches most likely to be closed are

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those located in LMI communities⁶ In this regard, groups asserted that NationsBank closes branches in its existing markets and in markets which it acquires, even when there is no market overlap California commenters charged that BankAmerica had already begun closing branches in inner cities and rural areas, and speculated that the pace would accelerate under NationsBank Other groups expressed apprehension concerning the fate of branches located in NationsBank's and BankAmerica's overlapping markets (Texas and New Mexico) A number of commenters requested that NationsBank's branch closing plans be made public so that affected communities could assess the potential impact of the closures and comment on them

North Carolina Fair Housing Center ("NCFHC"), Raleigh, NC, alleged that NationsBank, which had been the dominant bank in North Carolina, had closed 35 branches in that state since 1995 and suggested that most of the closures were in rural areas ICP charged that NationsBank had promised few, if any, branch closings in connection with its acquisition of Boatmen's Bancshares in 1996 because it was an out-of-market merger, yet closed branches in a number of its markets Of particular interest to ICP were eight branches which NationsBank closed in New Mexico ICP suggested that the predecessor institution (Sunwest Bank) had not found it necessary to close them, therefore, it must have been unnecessary for NationsBank to close them ICP alleged that this was symptomatic of NationsBank's attitude toward lower income states and communities ICP noted that NationsBank had recently announced the closing of more than 200 branches in Florida, charging that NationsBank sought to minimize this aspect of its acquisition of Barnett Banks, Inc , at the end of 1997, and complained that the Federal Reserve approval Order had not imposed the

⁶ ICP asserted that NationsBank's most recent CRA examination, dated July 21, 1995, is dated, and therefore, cannot be relied upon with respect to its record of opening and closing branches

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same kind of branch closing reports as the Board's approval of the out-of-market Boatmen's acquisition.⁷ ICP reviewed the information NationsBank provided in connection with the current application regarding its Florida branch closures and suggested that the closures are harmful because of the distance to the nearest NationsBank branch, particularly in moderate income tracts in certain areas. NPA asserted that NationsBank closed branches in LMI areas of Atlanta, replacing them with offices of its subprime lender, NationsCredit. The group suggested that such actions not only deprive the local populace of branch service, but force it to use higher-priced alternatives which enhance NationsBank's profits.

Although not the primary target of commenters' concerns, two groups believed that BankAmerica had closed branches in LMI areas without regard to the impact that the loss of these branches would have on the local community. OMI Neighbors in Action ("OMI"), San Francisco, CA, asserted that BankAmerica had not complied with CRA when it closed its branch in its predominantly low-income, black neighborhood in March of 1997. The coalition charged that BankAmerica violated its own branch

⁷ With respect to NationsBank's acquisition of Boatmen's Bancshares, the Board required NationsBank to supply a copy of its proposed branch closures as soon as it became available, and to notify the Federal Reserve Bank of Richmond ("FRB-Richmond") of any changes to the preliminary plan for a period of two years or until its next CRA examination, whichever was shorter. For branches to be closed in LMI tracts, the Order directed that NationsBank's plan indicate the proximity to the nearest surviving NationsBank branch and describe any steps NationsBank would take to mitigate the impact of the merger. The Order also stated that the Board would review any branch closures resulting from the Boatmen's acquisition in connection with future applications to expand the operations of NationsBank's depository institutions (83 FRB 156). Staff notes that the Board did not review these plans in connection with NationsBank's acquisition of Montgomery Securities in September, 1997 (83 FRB 924-7) because that transaction did not involve the operations of NationsBank's depository subsidiaries. With respect to NationsBank's acquisition of Barnett Banks, Inc., the Board required NationsBank to report closures in Georgia and Florida (the only two states where Barnett operated) to the Federal Reserve System during the two-year period following consummation as part of NationsBank's next applications to the System to acquire a depository institution. As in the Boatmen's acquisition, NationsBank was required to indicate the proximity of any LMI branches closed to the nearest surviving NationsBank branch and to describe the actions taken to mitigate the effect of the branch closure on the LMI community (84 FRB 139-140).

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closure policy when the branch was closed, that it prevented another bank from occupying its premises by refusing to remove its ATM, and that it reneged on promises to allow the branch's premises to be used by non-profit organizations. The group maintained its elderly residents must use public transportation, involving transfers, to travel to the nearest BankAmerica branch, and that local merchants do not have access to depository facilities. OMI indicated that it had contacted BankAmerica and local officials in order to prevent the closure. In addition, the group charged that, although residents using direct deposit wished to close their BankAmerica accounts in protest, they were afraid to move their funds because they had heard of lengthy delays in "releasing" their deposits.

NPA alleged that BankAmerica represented to the OCC that the BofA FSB branches located in the Chicago area Jewel/Osco grocery stores would be used to help meet the needs of the local community in order to obtain approval to merge its retail operations in various states into its lead bank in California, Bank of America National Trust and Savings Association ("BofA NTSA"), San Francisco, CA. The group maintained that BankAmerica waited until it had received approval to merge its banking entities to pull out of every Jewel/Osco branch in the area.

NationsBank's Response — NationsBank noted that both organizations have branch closing policies in place that ensure that branch closings do not have an adverse impact on LMI neighborhoods and stated that those policies will be continued in the combined company. In addition, NationsBank maintained that the banking companies are both committed to having the most convenient banking center network and to provide the highest quality of service to all of their customers.

NationsBank maintained that any comparison of the instant application to the Barnett application is inappropriate because the Barnett transaction

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involved extensive, overlapping markets NationsBank noted that its banking franchises overlap with those of BankAmerica only in a few markets in Texas and New Mexico,⁸ and stated that branches operated by the two organizations overlap in only five LMI areas in New Mexico Further, NationsBank indicated that nearly 22% of its existing New Mexico branches and nearly 28% of its current Texas branches are located in LMI areas Approximately 15% of BankAmerica's New Mexico branches are located in LMI areas, as are 26% of its Texas branches

NationsBank reiterated that no decisions have as yet been made as to branch closings or consolidations NationsBank provided a brief outline of the steps it is taking to identify redundant branches in the two areas and indicated that it did not anticipate having a preliminary list of recommendations ready until September At that time, it will be shared with its community investment and other business line executives for further issue identification The list will be considered confidential until the issues raised have been investigated and resolved

NationsBank provided the following preliminary information in summary form

⁸ NationsBank indicated that overlapping markets include Albuquerque, Clovis, Farmington, Las Cruces, Lea County, McKinley County, Roswell/Artesia, and Santa Fe in New Mexico, and Austin, Dallas, Fort Worth, Houston, Killeen-Temple, San Antonio, and Waco in Texas

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	New Mexico			Texas		
	Nations Bank	Bank America	Total	Nations Bank	Bank America	Total
Branches	No./%	No./%	No./%	No./%	No./%	No./%
LMI	11/25%	6/16 2%	17/21 0%	72/24 6%	44/26 7%	116/25 3%
Middle	22/50%	17/45 9%	39/48 1%	91/31 1%	49/29 7%	140/30 6%
Upper	11/25%	14/37 8%	25/30 9%	128/43 7%	71/43 0%	199/43 4%
Unknown				2/0 7%	1/0 6%	3/0 7%
Total	44	37	81	293	165	458

NationsBank indicated that its preliminary estimates, done without in-depth analysis, suggest that more than 60 branches, representing approximately 11% of the branches in the overlapping markets, will be closed

Regarding its merger with Barnett, NationsBank stated that the Board had reviewed NationsBank's branch closing policy and had taken into account NationsBank's record of closing branches in prior cases. NationsBank further noted that the Board had deferred to the OCC's examination of its branch closings and branch closing policy in connection with its CRA examination

NationsBank did not respond directly to ICP's comments, other than to note that ICP has protested four of NationsBank's transactions within the past two years, and characterized the allegations as repetitive of those first raised in connection with NationsBank's application to acquire Boatmen's, and repeated in the Montgomery and Barnett applications. NationsBank considered ICP's comments to be "unsubstantiated allegations" which have been previously considered and rejected by the Board on three separate occasions, most recently only six months ago

NationsBank also responded that it currently operates 203 bank branches in the Atlanta MSA, of which 36 are located in LMI areas. NationsBank

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further stated that is has closed only five branches in Atlanta LMI areas in the past two years, four of the five closures resulted from its acquisition of BankSouth Corporation (creating overlapping branches in the same LMI areas), and indicated that two of the four still offer drive-through service NationsBank stated that none of the five branches was replaced with a NationsCredit office Finally, NationsBank stated that NationsCredit operates five branches in the Atlanta MSA, but noted that they are all located in either middle or upper income census tracts

NationsBank responded that BankAmerica staff had met several times with OMI members to discuss their concerns regarding the closure of the branch in their neighborhood at the time of the anticipated closure (early 1997) Staff notes that OMI provided letters as attachments to its comment letters indicating that such meetings had, in fact, occurred According to NationsBank, BankAmerica, as a result of the meetings, modified customer account transfer letters and customers were given the opportunity to select a new branch and to receive a free order of checks BankAmerica also participated in discussions with the City of San Francisco and with another financial institution which had indicated interest in the branch location, at the request of the Board of Supervisors The other financial institution decided not to move into the neighborhood BankAmerica pursued several other courses of action, including consideration of making space available to non-profit groups, purchasing the lease on the building, and subsequently making the property available for purchase by a community group In its meetings with OMI, BankAmerica indicated OMI might consider obtaining an operating grant from BankAmerica Foundation, but that as of early June, 1998, BankAmerica had neither received an application for grant funds from the group nor sold the property Since the public meeting, NationsBank indicated that BankAmerica has again contacted this group to address OMI's concerns regarding access to banking services With

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respect to the allegations regarding the perceived lengthy delays in "releasing" deposits (i.e., compliance with the Expedited Funds Availability Act), BankAmerica stated that it is committed to operating in full compliance with applicable laws and regulations, and that it has effective internal compliance controls in place. Board staff contacted the OCC regarding the branch closure in OMI's community. OCC staff indicated that BofA NTSA had complied with the 90-day advance notice to the OCC and to the branch customers and that the OCC had received no comments regarding the closure at the time.

NationsBank explained that BankAmerica had not made assurances or commitments to the OCC that the Chicago area Jewel/Osco branch network would be retained, and the network was sold by BankAmerica in January, 1998, after an extensive profitability analysis was completed, with no adverse impact on BankAmerica's community development efforts in the Chicago area. Staff notes that since the network was sold and not closed, branch services would continue to be available through another financial institution in the Jewel/Osco locations.

Staff's Analysis — Both NationsBank and BankAmerica submitted copies of the branch closing policies currently in force within their respective franchises. Each subsidiary's policy has been reviewed by its respective supervisory agency and was determined to be in compliance with applicable regulations. Prior to closing any branch, NationsBank's corporate branch closing policy requires that the desirability of the facility's location be considered, including local traffic patterns, physical condition of the premises, and the ability to serve the receiving branch's market area. The policy also requires that the adverse impact on the community be determined, as well as actions to minimize the impact. All recommendations for closure are subject to approval by the Community

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Investment Program Regional Manager for the state. The branch closure policy also provides that meetings may be held with local community and political leaders to determine the impact on the community, at the discretion of the Community Investment Program Regional Manager.

NationsBank has submitted changes to the branch closing plans filed in connection with the Boatmen's acquisition and supplemental information regarding LMI closures, as required. In addition, NationsBank submitted a copy of its branch closing plans in connection with its acquisition of Barnett Banks, Inc., also as required.

Regarding the Boatmen's acquisition, as of May, 1994, NationsBank had closed or consolidated a total of 59 branches.⁹ Twelve (20%) of these branches were located in LMI areas, and in two cases, NationsBank closed the lobbies, but retained other facilities, such as drive-through banking lanes. NationsBank considers these to be reductions in service. In three cases, the branches were technically consolidated rather than closed.

NationsBank reported that several of the LMI branches were closed due to the poor condition of the premises, safety and security concerns, and lack of parking facilities. In these instances, the receiving branches generally offered increased teller and ATM services, better customer accessibility, and enhanced safety features. NationsBank indicated that, in two instances, it held meetings with local community groups to discuss the impact of the closings on the surrounding communities.

NationsBank provided the following information with respect to its

⁹ Branch closures, relocations, and consolidations are defined in the Joint Interagency Policy Statement (September 1993). A relocation involves the movement of the branch within the same immediate neighborhood that does not "substantially affect the nature of the business or customers served." Generally, relocations are considered to have occurred only when short distances are involved (i.e., moves across the street, around the corner, or a block or two away). Moves of less than 1,000 feet are generally considered to be relocations. In less densely populated areas, where neighborhoods extend farther and a long move would not significantly affect the nature of the business or the customers served, the move may involve longer distances.

Barnett closures

	LMI	Middle	Upper	Unknown	Total
NationsBank/Barnett	174/16%	553/51%	347/32%	16/1%	1,090
DOJ Divestitures	23/34%	34/51%	10/15%	0/0%	67
Subtotal	151/15%	519/51%	337/33%	16/2%	1,023
Barnett Closures	32/15%	116/54%	68/31%	0/0%	216
Total	119/15%	403/50%	269/33%	16/2%	807

Staff reviewed the detailed reporting NationsBank regarding its Barnett branch closures, provided in connection with the current transaction, and notes that NationsBank has conservatively categorized its branch closures in LMI areas. Slightly more than half of the branch activity in LMI areas which NationsBank has categorized as closures are, in fact, consolidations. The percentage of branches remaining in LMI tracts after the branch closures has remained stable when compared to the percentage of branches located in LMI tracts after the DOJ-required divestitures.

It does not appear that NationsBank is disproportionately closing branches in LMI areas with respect to the Boatmen's acquisition and staff does not believe that NationsBank is disproportionately closing branches in LMI areas with regard to the Barnett acquisition. Nevertheless, staff recommends that the Board require newly merged organization to report branch closings that occur as a result of this proposal to the Federal Reserve System during the two-year period after consummation as part of its next applications to the System to acquire a depository institution. For branches closed in LMI census tracts, the merged organization should indicate the proximity to the nearest surviving branch and the steps taken to mitigate the impact of the branch closure.

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*Subprime Lending
Affiliates*

Groups criticized NationsBank for what they believe to be discriminatory and deceptive practices by NationsBank's subprime lending subsidiaries, NationsCredit and EquiCredit. Commenters alleged that these two subsidiaries primarily target minority and low- to moderate-income individuals and communities, to whom they offer credit products having higher rates and fees than those available through bank branches. Commenters cited HMDA data for NationsBank's mortgage company and NationsCredit that purportedly show high denial rates to minorities for the mortgage company and more loans to minorities for NationsCredit, as evidence that "steering" is occurring.¹⁰

ICP criticized what it believes to be NationsBank's referral processes. ICP repeated a comment it submitted in connection with both the Boatmen's acquisition in 1996 and the Barnett acquisition in 1997, charging that NationsBank at one time had a referral process in place to refer applicants from its banks or its mortgage company to its subprime lending affiliate, but that it had never put in place a publicly-announced process to refer qualified applicants from the subprime affiliate to one of NationsBank's banking affiliates or to its mortgage company. ICP believes this failure to implement the "referral up" process reflects on the credibility of management and repeated its request for the Federal Reserve to conduct an on-site consumer compliance and fair lending review of NationsBank's subprime lending subsidiaries.

ICP further objected to a recent NationsBank announcement that appeared to indicate that NationsBank would implement an internal referral policy whereby affiliates would offer customers mortgages through any

¹⁰ Several groups, notably ICP, also charged that NationsBank's subprime affiliates "refuse" to report HMDA data. Staff notes that both NationsCredit and EquiCredit do report HMDA data annually.

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other affiliate having a product for which the customer qualified in a manner which would not be apparent to the customer. For example, an applicant not qualifying for a mortgage through one of the banks or through the mortgage company because of the applicant's credit history might be offered a product through a subprime subsidiary in a process "transparent" to the customer. ICP believed that this process potentially raises fair lending issues with respect to adverse action notices and has other ECOA implications.

Groups asserted that subprime entities charge higher rates and fees and engage in deceptive practices, suggesting that borrowers are induced to refinance their loans frequently, thereby "stripping" the equity from the home and increasing the payment burden on the borrower.¹¹ In addition, several groups alleged that NationsBank closes branches in LMI areas and replaces them with NationsCredit offices, thereby depriving the communities of full service, lower cost banking products, and suggesting that NationsBank then directly profits from the higher fees charged its subprime lenders.¹² Groups requested that NationsBank demonstrate that its

¹¹ ICP provided a copy of a complaint against NationsCredit filed recently by a customer claiming that NationsCredit and its predecessors had improperly charged credit life insurance in connection with the loans. ICP asserted that this was but one example of "predatory practices" of subprime lenders and stated that such suits are uncommon because they are generally settled out of court with a stipulation that the borrower not publicly discuss the dispute. Other commenters provided copies of news items regarding allegedly deceptive practices in which NationsCredit or its predecessors were named. Staff notes that many of these news items were dated several years ago. In the case of the information on the specific instance cited by ICP, staff notes that the case is apparently pending and will be appropriately resolved by the courts.

¹² For example, National People's Action ("NPA"), Chicago, IL, charged that NationsBank closed "almost every" standard bank branch in low- and moderate-income areas in Atlanta, replacing them with branches of its subprime lending affiliates. Board staff contacted the OCC regarding this assertion. OCC staff indicated that it had received no complaints when any such branches were closed. NationsBank responded that it currently operates 203 bank branches in the Atlanta MSA, of which 36 are located in LMI areas. NationsBank further stated that it has closed only five branches in Atlanta LMI areas in the past two years, four of the five closures resulted from its acquisition of BankSouth Corporation (creating

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subprime lending subsidiaries follow consumer lending laws, do not encourage borrowers to refinance, limit broker fees, and requested that NationsBank reimburse those hurt in the past by the "predatory lending practices" of these subsidiaries

NationsBank's Response — NationsBank stated that the management of its subsidiaries, including NationsCredit and EquiCredit are committed to operating in full compliance with all applicable laws and regulations and do not condone unfair and deceptive business practices. NationsBank indicated that both NationsCredit and EquiCredit have effective consumer compliance infrastructures in place and that the consumer compliance staffs of both subsidiaries work closely with the consumer compliance group responsible for NationsBank's banks. The banking consumer compliance group also performs consumer compliance reviews of NationsCredit and EquiCredit.

NationsBank indicated that operating these two subsidiaries allows it to offer a wider range of financing alternatives to its customers and that NationsCredit and EquiCredit make loans at market rates and have extensive consumer compliance programs in place. NationsBank stated that consumer finance companies play an important role in providing credit to people who might not otherwise have access to it and noted that many large financial institutions operate significant consumer finance operations. NationsBank further noted that the lending and sales activities of such operations are subject to numerous consumer protection laws and that both NationsCredit and EquiCredit have in place comprehensive compliance

overlapping branches in the same LMI areas), and indicated that two of the four still offer drive-through service. NationsBank stated that none of the five branches was replaced with a NationsCredit office. Finally, NationsBank stated that NationsCredit operates five branches in the Atlanta MSA, but noted that they are all located in either middle or upper income census tracts.

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programs to ensure compliance with such laws and regulations

NationsBank also categorically denied that it in any way "steers" minority customers to NationsCredit and maintained that claims that NationsBank purposefully encourages minority loan applicants, who would otherwise qualify for traditional bank and mortgage products, to seek higher interest rate products was wholly unsubstantiated. NationsBank explained that as a result of the Barnett transaction, NationsCredit experienced a change in management in December, 1997, and all NationsCredit and EquiCredit referral programs involving the NationsBank banks and NationsMortgage Corporation were suspended as part of an overall business review. Currently, NationsBank is carefully reviewing the implementation of a nationwide referral program and indicated that it will only be fully implemented after determination that any such programs are in full compliance with all applicable fair lending and consumer protection laws.

Board staff spoke with the OCC in connection with its 1997 consumer compliance examination of NationsBank, specifically with regard to NationsBank's referral programs. OCC staff indicated that they had found no evidence that NationsBank's referral programs violated fair lending laws.

Lending Records

Numerous groups and individuals criticized the lending records of one or both banking organizations. Commenters alleged discrimination on the part of one or both organizations against minority groups in general, but specifically against blacks, hispanics, asians, and American Indians. Commenters also asserted that one or both organizations do not adequately lend to LMI individuals and areas. Commenters' allegations included

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HMDA lending, small business lending, and other consumer lending¹³ In addition, some small business lending critiques included criticisms of the level of investment in minority-owned businesses

The most comprehensive criticism of NationsBank's and BankAmerica's lending practices was submitted by CANICCOR ("CANICCOR"), San Francisco, CA, an interfaith group concerned with corporate accountability to social goals. CANICCOR developed its own algorithms for analyzing HMDA and CRA Small Business lending data, by which CANICCOR determines an "expected" volume of originations for an institution by product and population/economic segment. Using its method, CANICCOR analyzed the HMDA and CRA data for both NationsBank and BankAmerica¹⁴ in each organization's respective states and determined both institutions to be lagging its expected origination level in home mortgage-related and small business lending. CANICCOR requested that NationsBank commit to attaining or exceeding "parity" with the industry lending volume levels which CANICCOR identified, for both home

¹³ For example, Greenlining Institute ("Greenlining"), San Francisco, CA, generally asserted that less than 3% of the dollar amount of conventional home loans were made to blacks, hispanics, or asians by either NationsBank or BankAmerica. Greenlining suggested that this percentage is low, maintaining that the majority of potential homeowners in both organizations' major markets are minorities. In addition, Greenlining alleged that less than 2% of the dollar amount of business loans were made to black-, hispanic-, or asian-owned businesses and requested that the supervisory agencies perform a random sampling of such loans if either organization disputes Greenlining's assertion.

¹⁴ Staff notes that CANICCOR based its analysis of BankAmerica's HMDA lending on CANICCOR's estimates of what the lending patterns would be without the manufactured housing loans generated by a subsidiary of BankAmerica which was sold in 1998. CANICCOR asserted that the elimination of the manufactured housing loans significantly, and adversely, affects the data with respect to LMI individuals. Given the "Outstanding" rating awarded to BofA FSB by the OTS in 1997, and the fact that the manufactured housing division had been part of BofA FSB, CANICCOR requested that the Board delay its decision on this proposal until the OTS performs another CRA examination of BofA FSB without the manufactured housing division. Staff notes that CRA examinations are performed as of a point in time, and include the relevant entities at that particular time. Staff does not believe that any such re-examination is necessary and notes that the deposit-taking branches of BofA FSB have been sold.

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mortgage-related and small business lending

National Peoples' Alliance ("NPA"), Chicago, IL, complained that NationsBank and BankAmerica denied proportionately more non-white applicants than white applicants, and each organization denied far more applicants for properties located in LMI areas than applicants for properties located in upper income areas. Several affiliated groups criticized NationsBank's and/or BankAmerica's lending in discrete markets, again citing only the denial rates, and generally providing no additional information.¹⁵ Markets of interest to NPA members and groups included Atlanta, GA, Tampa-St. Petersburg, FL, Des Moines, IA, Wichita, KS, and San Antonio, Texas. In addition, NPA groups also complained that members had experienced difficulty obtaining HMDA data from NationsBank in several markets,¹⁶ and alleged that NationsBank had not provided the data requested as required by law.¹⁷

Commenters criticizing NationsBank charged that NationsBank uses standardized loan products and credit rating systems that are inflexible and unresponsive to community needs. A number of groups and individuals maintained that NationsBank's lending has declined in its existing communities and in communities it entered through acquisition. For

¹⁵ Commenting groups included groups from states in which neither banking organization has a depository presence. Staff notes that an organization's lending volume in communities where there is no banking presence is generally lower than in areas where an organization maintains depository facilities.

¹⁶ In one instance, the groups charged that NationsBank caused a member to be disciplined by his employer, suggesting that NationsBank had used this tactic to discourage groups from requesting information. NationsBank responded that the individual, an employee of a United Way agency, had submitted the request for lending data in a letter bearing his agency's letterhead. Assuming the request to have come from the agency, NationsBank contacted the agency in response. NationsBank maintained that it had no control over any disciplinary actions which the individual's agency might have undertaken.

¹⁷ NationsBank responded that it had provided all requested data in accordance with the time frames required by Regulation B. Staff's review of the timetables and other material provided by the commenters making these allegations supports NationsBank's position.

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example, North Carolina groups charged that the number of loans which NationsBank made to low-income households in that state was low and that NationsBank made fewer small business loans in North Carolina than some of its smaller competitors. Some commenters, such as Concerned Clergy Coalition ("Concerned Clergy"), Kansas City, MO, attributed this perceived decline in lending to the fact that credit decisions are made by out-of-town NationsBank staff unfamiliar with the local community and to NationsBank's failure to deliver promised programs and resources after it acquired Boatmen's (the predecessor bank in Kansas City). Concerned Clergy also asserted that NationsBank has restricted access to credit in Kansas City by denying loans that Boatmen's staff would have approved.

A Texas group attempted to draw a direct correlation between an institution's share of deposits and its mortgage market share in the same community.¹⁸ The group criticized NationsBank, which it believed to be the largest depository institution in the state, because the group believed that NationsBank should also be the largest lender to minority and low-income areas in the state. A number of black businesses and associations in Florida charged that NationsBank's lending to minority home buyers and businesses in Florida is deficient and that it has not adequately provided capital to black-owned businesses in that state.¹⁹

In general, California groups praised BankAmerica's lending record,

¹⁸ Staff notes that there are generally far more mortgage loan providers in an area than there are depository institutions, consequently, staff does not believe such comparisons to have merit.

¹⁹ The Coalition ("The Coalition"), Tallahassee, FL, charged that NationsBank failed to honor a commitment to provide investments in Black Business Investment Corporations ("BBIC"). Materials submitted by The Coalition indicate that this group requested \$50 million in equity investments and other funding and support from NationsBank and refused NationsBank's counter proposal for \$35.2 million. NationsBank then offered to fund a part of the request (\$1.4 million), but there was a misunderstanding regarding the form of the funding. NationsBank subsequently indicated that the funding was in the form of a grant and maintained that it had discussed the possibility of more effective funding through an interest-free subordinated loan as well as an additional \$1 million secured loan with a 2% interest rate.

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maintaining that BankAmerica has extensive experience in lending to minorities and minority groups, particularly with respect to hispanics and asians, because of their greater representation in the population of BankAmerica's communities. Many California groups asserted that BankAmerica has a better record of lending to minority groups and areas, and LMI individuals and areas, in its home state (California) than NationsBank does in its home state (North Carolina), and expressed apprehension that NationsBank's "less favorable" practices might be "exported" to BankAmerica's markets. Nevertheless, the Pastors and Ministers Conference of San Francisco and Adjacent Cities, Inc ("Pastors and Ministers Conference"), and OMI/Save the BankAmerica Coalition ("OMI/Save BankAmerica"), both of San Francisco, alleged that BankAmerica discriminates against minority, particularly black, individuals and areas.

The Texas Reinvestment Coalition ("Texas CRC") criticized BankAmerica's manufactured housing lending, asserting that BankAmerica "disproportionately targeted" low-income and minority communities in Texas with manufactured housing loans, which they believed to have higher interest rates than other types of housing loans. Texas CRC also complained that BankAmerica sold the manufactured housing unit, but failed to offer another affordable housing plan in its place.

The Paz Group criticized both institutions' small business lending, charging that NationsBank and BankAmerica are out-of-state banks having little interest in serving the small business community, demonstrated by their lack of SBA lending in South Dallas. The Paz Group also expressed concerns regarding the use of credit scoring in making lending decisions due to what the Paz Group believes to be the high rate of errors contained in credit reports.

Commenters from New Mexico echoed the Paz Group's concerns.

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regarding the use of application scoring in centralized corporate locations. Other commenters alleged that NationsBank and/or BankAmerica do not adequately serve the poor or rural areas in that state, and expressed concerns regarding the potential decline in small business lending.

Several groups charged that NationsBank and/or BankAmerica have not put lending programs in place to serve various specialized markets. For example, a Denver group complained that neither organization has a lending program for people with disabilities. Groups having an interest in childhood lead poisoning charged that NationsBank had not done enough to address this issue in its lending programs in low-income areas. Other groups criticized NationsBank's assistance to communities following natural disasters.

NationsBank's Response — NationsBank responded that both NationsBank and BankAmerica have been innovative leaders in their community reinvestment efforts, which NationsBank indicated exceed Interagency Guidelines. NationsBank indicated that both organizations have implemented anti-discrimination training and testing programs, that their HMDA and non-HMDA lending shows broad penetration of minority and LMI areas, that each organization has carefully analyzed its HMDA data as part of its on-going needs assessment and outreach efforts, that each institution has established flexible credit products and underwriting standards in order to make credit more accessible and more affordable to underserved and LMI areas, that each organization has worked closely with community groups to enhance its products offerings, educational efforts, and credit counseling, and that merged organization is committed to ongoing enhancements of these efforts.

NationsBank maintained that both organizations have made credit available to all borrowers without regard to race or income. NationsBank

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indicated that it and BankAmerica are the leading providers of conventional home loans to minorities. Based on 1996 HMDA data, NationsBank stated that it made approximately \$2.7 billion in mortgage loans to minority borrowers, representing 16% of NationsBank's total HMDA-reportable loans. Approximately \$2.5 billion of NationsBank's mortgage loans were provided for properties located in LMI areas. NationsBank asserted that it had the third largest share of loans in terms of loans to LMI borrowers, minority borrowers, and LMI geographies. NationsBank maintained that its market share in these categories exceeded its market share with respect to all HMDA-reportable loans. NationsBank indicated that between 1992 and 1996, BankAmerica booked \$9.3 billion in home loans to borrowers having incomes below the median and to borrowers in LMI geographies. In 1997, BankAmerica originated \$3.5 billion in LMI areas.

NationsBank criticized the use of denial rates to support allegations of discriminatory lending, noting that the more outreach an institution does, the more denials it is likely to make. NationsBank asserted that the number of loans to LMI and minority individuals is the more appropriate measure of an institution's discharging its obligation to make credit available to its communities. In addition, NationsBank noted that statistical discrepancies evident in HMDA do not provide conclusive evidence of illegal discrimination, for the data do not capture factors affecting an applicant's credit worthiness, such as existing assets, debt burden, credit history, or other important credit criteria. NationsBank indicated that a number of environmental factors, such as housing turnover, availability of brokers and appraisers, mortgage insurance, and government assistance programs, are not reflected in HMDA data.

NationsBank also stated that HMDA data alone provides an incomplete measure of an institution's lending efforts in its communities. HMDA data does not reflect an institution's participation in multi-bank loan pools and

other community investment efforts designed to increase the level of affordable housing in minority and LMI neighborhoods. Further, NationsBank noted that other types of lending to minority and LMI neighborhoods, including general consumer lending, small business lending, general commercial lending in underserved areas, and participation in government and other insured programs, contribute to meeting the needs of a community and its development. NationsBank indicated that both organizations have strong records in these areas.

NationsBank indicated small business lending is an essential element of the community development efforts of both organizations. NationsBank noted that Regulation B currently prohibits the collection of data by race with respect to small business lending, therefore, statistics regarding its small business lending to minorities are not available. NationsBank stated that it made approximately \$11.2 billion in small business loans in 1997, of which \$2.3 billion was originated to small businesses located in LMI areas. NationsBank outlined several elements of its lending programs:

- **Outreach** - NationsBank participates in hundreds of programs designed to educate consumers and small business lenders and has established an active business development/outreach effort. Each NationsBank market has an active small business lending program, with special attention given to calls on minority professional firms and minority-owned businesses.
- **Local Responsibility** - Small business loan decisions are made through the local lending unit responsible for small business credit utilizing approved credit approval processes. NationsBank indicated that its CRA training process is designed to enhance the sensitivity of local lending officers to their target markets and to encourage their support for business development efforts. NationsBank maintained that it encourages its loan officers to provide technical assistance to applicants.

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requesting small business loans and supports these efforts at both the bank and corporate levels through general and CRA management functions

- **Special Products** - NationsBank indicated that its special products for the small business market include SBA products and a special lending product for minority contractors. NationsBank stated that it is actively involved with the Small Business Administration in improving the delivery of government guaranteed loans to small businesses, and with the Farmers Home Administration in its guarantee and subordination program for small farms. NationsBank noted that it is an SBA preferred lender, and that the SBA has named NationsBank the number one bank lender to small businesses in the United States.
- **Other Support** - NationsBank supports small businesses in its investment in community development corporations and in its participation in various public/private partnerships. For example, NationsBank provides low-interest loans for day care centers across the region.

NationsBank also noted that BankAmerica is a leader in small business lending and that BankAmerica offers several special programs to meet the needs of small and minority-owned businesses.

- **Small Business Loans/Lines of Credit** - Between 1992 and 1996, BankAmerica made \$3 billion in conventional small business loans and lines of credit under \$50,000. In 1997, BankAmerica made \$1.1 billion in loans and lines of credit for \$100,000 or less.
- **SBA Lending** - BankAmerica is an SBA preferred lender in 46 SBA districts and was the first bank to book loans under SBA's FA\$TRAK program. BankAmerica has booked more than 500 such loans, totaling almost \$10 million, loan sizes average \$20,000. In 1997, BankAmerica booked approximately 1,400 SBA loans, totaling \$410 million, and has

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booked 1,011 loans totaling \$240 million by the second quarter of 1998
In addition, BACDB made more SBA loans in California to blacks than the combined loans of the next 13 companies

- In 1998, BankAmerica was the first to be awarded National Certified Lender status by the U S Department of Agriculture

NationsBank selectively responded to specific criticisms, often using its \$350 billion pledge to respond to concerns or directing commenters to its application materials. With respect to its lending in North Carolina, NationsBank responded that in 1996, it originated mortgage 17,373 loans, totaling approximately \$1.4 billion. It originated more than 4,030 mortgage loans, totaling \$214.8 million to LMI applicants. NationsBank noted that more than 25% of its mortgage applications came from LMI applicants and more than 23% of its originations were to LMI applicants. NationsBank noted that it originated 4,156 small business loans, totaling \$427.4 million in North Carolina in 1996. NationsBank indicated that more than 22% of these loans were originated in LMI tracts. In addition, NationsBank stated that it originated 3,218 loans (\$99.9 million) for less than \$100,00 and 2,041 loans (\$22.4 million) in LMI tracts.

NationsBank responded to the LaPaz Group's criticism by stating that it recently announced \$500 million commitment for loans and investments in South Dallas over the next four years. NationsBank indicated that this commitment builds on a \$40 million commitment made in 1994 that was reached and exceeded in 1997, and which resulted in the creation of 100 single-family housing units, 300 multi-family housing units, and two child care facilities.

Staff notes that in many of its responses, NationsBank included copies of correspondence with the commenting group(s). NationsBank's responses and its correspondence show that NationsBank has met and is continuing to

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meet with commenters to attempt to address their concerns. For example, NationsBank stated that although it does not currently offer a credit product specifically designed to reduce childhood lead poisoning, many of its redevelopment lending and investment projects serve that goal. NationsBank indicated a willingness to consider proposals by proponents of this social issue in its future development projects and to continue discussion with the group(s) regarding this issue.

Staff also notes that the application describes a BankAmerica program, ADA Loans, to provide financing to people with disabilities for the purchase and/or retrofitting of vehicles, personal property, and homes. Products include auto loans, personal loans, home equity loans and offer customers longer terms than standards products. In addition, all declined loans go through a second review process and BankAmerica maintains an ADA officer to act as a liaison between community groups representing individuals having disabilities and provides toll-free 24-hour customer service lines for customers with disabilities, to provide up-to-date information on all BofA products, services, and account information.

Advocacy Call Center

Several commenters objected to the operation of NationsBank's Advocacy Call Center. NationsBank staff refers individuals having a fair lending complaint to its Consumer Advocate (via an 800 number) at its Advocacy Call Center. The Consumer Advocate conducts an investigation of a complaint received and responds to the customer within 72 hours. Commenters suggested that callers were not informed by the Consumer Advocate that they have a legal right to file a complaint with the appropriate agencies if they were dissatisfied with the Consumer Advocate's findings. Some commenters complained that calls were not returned within 72 hours and that, despite NationsBank's assurances that it would change its pamphlets to address these concerns, this promise has not

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been kept. Commenters further alleged that the Consumer Advocacy Center has no real expertise in fair lending and investigative techniques or on issues which they dismiss as customer service issues, which really are disparate treatment in terms and conditions of a loan and violations of both ECOA and the Fair Housing Act. Several groups believed that NationsBank's toll-free number for consumers to report fair housing violations committed by NationsBank constitutes a conflict of interest and may hurt those already wronged. Several groups called for NationsBank to discontinue this program and, instead, arrange to have a private, fair housing enforcement agency to investigate such complaints. If NationsBank will not do that, then it should describe the Call Center as a customer service entity and include all complaints made to the entity in its CRA file.

NationsBank maintained that its Customer Advocacy Call Center is staffed by employees who receive extensive training in fair lending and related areas, and that in responding to inquiries, these employees are also trained to rely on NationsBank's in-house experts. NationsBank indicated that the Call Center employees may request advice from the credit, legal, and compliance departments to respond to inquiries. NationsBank stated that the Call center responds to inquiries directed to it within 72 hours, noting that the ultimate resolution may take longer, depending on the complexity of the issue. NationsBank expressed the belief that the program is helpful to consumers and that it does not constitute a conflict of interest. NationsBank also noted that recipients of Adverse Action notices are advised in writing as to how they may file complaints with governmental agencies.

Rural Initiatives

Commenters expressed concern about both organizations' rural

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programs, in particular, programs targeted to Native Americans. Some commenters believed BankAmerica's programs to be superior to NationsBank's rural initiatives and others questioned NationsBank's ability to address rural issues in the Western states, believing them to differ significantly from rural needs in the East, and NationsBank's experience with Native American investments and lending. Many commenters, particularly those in California, requested that Bank of America's Rural 2000 program be retained and expanded. NationsBank responded that, while it does have its own programs which seek to address the needs of rural communities, after the merger, Rural 2000 will be extended to the states and areas now served by only NationsBank, including all parts of New Mexico and the rural areas and rural portions of metropolitan areas in Texas.

NationsBank's Programs — NationsBank's rural initiatives and programs are included in its overall community development efforts under the direction of the corporate Community Investment Group. In addition to traditional bank products and services, NationsBank uses financial intermediaries to help meet the affordable housing, small business, agribusiness, and economic development needs of rural communities. It has also established partnerships and strategic alliances with a number of organizations to identify and address rural issues.

NationsBank established a Rural Forum within its Community Investment Group to address the product and market issues impacting NationsBank's ability to make loans to LMI individuals in rural communities. NationsBank indicated that this forum assists in identifying enhancements and modifications to products and program delivery in rural markets.

Traditional banking products are available through its branches and

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NationsBank indicated that NationsBank Mortgage Corporation has special account executives who target home ownership business development in LMI rural and urban markets. In addition, NationsBank participates in a variety of programs involving federal, state, and local governments which benefit rural areas. Examples include

- Rural Economic Community Development Participation Program - Recently introduced by USDA's Rural Housing Service to provide low-interest housing loans to individuals and families in rural communities, NationsBank is providing matching funds for this initiative in South Carolina
- Farm Services Agency Program - This program provides credit enhancement for loans to family-sized farms and ranches. In South Carolina, NationsBank reported making 10 loans totaling \$1.4 million in 1997
- Rural Loan Services Program in Tennessee - This program assists with agricultural lending within the state, NationsBank reported two loans (totaling \$510 thousand) in 1996 and six loans (totaling \$1 million) in 1997
- SBA 504 Program - NationsBank participated with Rural Missouri, Inc., a certified development company for this SBA program in Missouri's rural markets, making loans totaling \$2.3 million since mid-1997, for projects that provide new construction or expansion of small business development

NationsBank stated that it supplies funding to financial intermediaries primarily through two channels

- NationsBank Community Development Financial Institutions ("CDFI") Initiative - This is a \$25 million capital fund established to lend to and invest in financial intermediaries such as community development banks

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and credit unions, multi-bank community development corporations, and micro-enterprise loan funds NationsBank indicated that the majority of NationsBank CDFI loans and investments have been directed to organizations that strengthen small and rural communities

- NationsBank Community Investment Financial Institutions ("CIFI") Initiative - This fund was developed to enhance existing partnerships with 10 minority-owned banks in which NationsBank is an investor, many of these banks serve majority rural markets NationsBank reported that the \$3.1 million in equity investments are used by the banks to raise their capital base and to spur economic development in local communities In addition, NationsBank noted that it has sold more than \$20 million in loans to these institutions to support their growth and expansion

NationsBank has also works with private organizations on a national level to address needs identified in rural communities For example, NationsBank provided a \$1 million loan to increase the capital base of the Low Income Housing Fund's revolving loan fund, an affordable housing financial intermediary that provides financing and technical assistance to non-profit sponsors of affordable housing NationsBank also has established a strategic alliance with Rural Local Initiatives Support Coalition ("LISC") by providing a \$350 thousand grant The grant will help to cover the costs of support to 18 CDCs in 11 states within NationsBank's existing franchise NationsBank noted that it also provides governance, environmental, and policy technical assistance to Rural LISC and included examples of projects involving Rural LISC affiliates in several of its states

NationsBank indicated that it also works with organizations such as the National Council of La Raza and the Enterprise Foundations to strengthen

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community development capacity of local, non-profit organizations serving rural communities NationsBank reported that it had expanded and enhanced its home ownership partnership with the National Council of La Raza to a level of \$500 thousand and had added the new cities of El Paso, Houston, San Antonio, and Charlotte to this initiative

BankAmerica's Programs — BankAmerica's rural initiatives consist of a broad range of activities, of which its Rural 2000 is its capstone Rural 2000 - Introduced in mid-1997 and continuing through the year 2000, the Rural 2000 Community Development Initiative was designed to address rural development problems comprehensively using a team approach for issue identification and resolution The goal of this project is to increase the level of community development resources in LMI markets in rural areas served by BankAmerica, primarily by seeking to leverage BankAmerica's resources with public and private partnerships Its components include initiatives focusing on the needs of Indian Country and the colonias (small towns) along the Texas-Mexico border Rural 2000 is currently available in all of BankAmerica's existing assessment areas and Hawaii ²⁰ After the merger, NationsBank has stated that Rural 2000 will be extended to the states and areas now served by only NationsBank, including all parts of New Mexico and the rural areas and rural portions of metropolitan areas in Texas

BACDB and its related Community Development Division of BofA FSB have established a goal of \$500 million in multi-family affordable housing

²⁰ In Texas, only the area served by the Colonias Initiative is currently part of Rural 2000 because the existing assessment areas of BofA Texas are limited to major metropolitan areas Hawaii had been part of BofA FSB's assessment area prior to the sale of its deposit-taking branches there Since BofA FSB's Community Development and Mortgage Divisions maintain offices in Hawaii and provide support for Rural 2000 in that state, therefore, NationsBank has indicated that the sale of those branches has had a limited effect on Rural 2000 activities in Hawaii

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finance and government small business programs in rural areas and BankAmerica Foundation is targeting a goal of \$5 million in grants/contributions for the three year period. The \$5 million in grants and contributions will be allocated so that 75% is targeted to fund proposals that meet BankAmerica Foundation's Community Development guidelines, with special emphasis given to special priorities for this Initiative,²¹ and 25% targeted to fund initiatives using a Request For Proposal process. Ideally, the targeted fund component would allow BankAmerica Foundation to identify and recruit new and additional resources to more effectively address rural needs.

Rural 2000 has just completed its first year, which was intended to be dedicated to issue identification and solution development. This initiative is guided by four Advisory Committees composed of rural development professionals to assist BankAmerica to develop strategies, programs, and projects. In addition to a national committee, there are three regional committees (California, Northwest, and Southwest). The national committee helps BankAmerica to focus community development resources that best leverage the resources of national intermediaries, foundations, and federal agencies, and the regional committees help to define regional difficulties in rural markets.

Activities under way include development of a geographic monitoring capability to track BofA lending and investment activity in rural areas,²²

²¹ For 1998, these special priorities are funding of financing in gap construction of community facilities, especially child-care facilities and "community building" projects or programs, support for Individual Development Account ("IDA") programs, capacity-building support for non-profit organizations engaged in activities, such as establishing an electronic benefits transfer ("EBT") or electronic funds transfer ("EFT") program in isolated areas or developing/expanding community development loan fund servicing in rural areas, use of technology to meet rural needs.

²² Staff notes that a major component of this effort was to devise a methodology for tracking and reporting its performance. BankAmerica had to establish a definition for "rural," which has no one, universally accepted definition, and to translate that definition into geo-codable geographies consistent with

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development of delivery systems for mortgage loans and a product mix of such products for BofA's rural markets, as well as the establishment of a rural-mortgage lending goal for 1998-2000 by BankAmerica Mortgage, development of programs to re-capitalize well-managed rural revolving loan funds through the purchase of individual business loans meeting bank standards for credit and repayment history by the small business lending units, development of a team approach to comprehensively address problems in rural development, production of case studies and other materials to document BankAmerica's experiences in rural community development (initially for internal use and possibly for industry-wide use later), identification and development of partnerships with foundations and government agencies to expand the total resources available for rural community development

Programs include the establishment of rural priorities for community development grant making and development of improved delivery systems for mortgage lending in rural areas. BankAmerica has implemented the following in response to needs identified as part of Rural 2000

- Rural Non-Profit Mortgage Broker - A pilot program created to use non-profit organizations to serve as mortgage brokers in rural areas to assist BankAmerica in originating loans in typically underserved markets, BankAmerica has chosen four non-profits to participate (NHS of Santa Fe, Community Services of Reno, Housing America of Yuma, and United Housing in Tucson)
- Manufactured Housing Replacement Program - A collaboration between Bank of America Housing Services and the USDA Rural Development Group, this program combines a manufactured home loan with a USDA 502 Direct mortgage, which results in a flexible program and a blended

how banks track performance for HMDA and CRA purposes. BankAmerica believes that it is the only large bank that has accomplished this task

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rate The program targets LMI residents who need to upgrade or replace dilapidated manufactured home structures and is being promoted and administered through the Northern Arizona Council of Governments

- Mortgage Warehousing Line of Credit - Developed by BACDB in response to concerns raised by United Housing of Arizona, this new product will be usable for rural self-help housing developers

Indian Country Initiative - The Indian Country component of Rural 2000 builds on past efforts by BankAmerica and existing commercial banking relationships To date, the focus has been to build capacity for community development in Indian Country, enhance and expand relationships with tribes and organizations, and create a thorough understanding of issues affecting the delivery of community development services into Indian Country BankAmerica reported that it has been working in collaboration with First Nations Development Institute and other Native American organizations to define, prioritize, and address issues unique to Indian Country, and maintained that BankAmerica initiated the first community reinvestment outreach to California reservations and Native American organizations BankAmerica's support of Indian Country initiatives includes a \$150,000 grant to ONABEN, a Native American organization based in Oregon and Washington, to expand ONABEN's capacity to foster reservation-based micro-enterprise, the grant funded expansion of loan fund staffing and systems, as well as geographic expansion of activities into Idaho and Northern California Other activities included support and support commitments for conferences organized by Native American organizations and a \$12,500 grant to California Indian Legal Services to support development of a model for applying for the NAHASDA block grant

Colonias Initiative - BankAmerica developed this program with the USDA and the Ford Foundation to address comprehensive community development issues in the colonias (small towns) located along the Texas-Mexico border. Introduced in 1996, this program is designed to use public-private partnerships to work with the local communities to assess the communities' most critical social and economic problems and to design local action plans which address the problems. The goal is to work with local residents and leverage additional public and private sector funds to permanently improve the living conditions for the extremely low-income families living in the colonias. If successful, this program will serve as a model for additional public-private initiatives.

The Colonias Initiative is still in the developmental stages. BACDB's Affordable Housing Group, the USDA, and the Ford Foundation are the funding partners who choose technical assistance providers for the colonias, provide direction to the technical assistance providers on their technical assistance efforts and product development, and monitor the specific results and failures. The program currently has two technical service providers, the Housing Assistance Council and Valley Interfaith. Each provider is working with three colonias and each is using a different model, based on a "bottom-up" approach, to bring about results. They anticipate creating models and programs which can subsequently be replicated in other areas. Projects address infrastructure needs, such as providing water or sanitary sewer connections, as well as affordable housing and credit products for extremely low-income individuals.

Other Rural Initiatives - BankAmerica reported involvement in a variety of housing initiatives benefitting rural areas. For example, in partnership with the Southeast Idaho Council of Governments, the US Department of

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Agriculture Rural Development Administration("USDA-RD"), Rural LISC and the Federal Home Loan Bank of Seattle, BankAmerica will finance 15 homes to LMI borrowers in the counties of Power, Bingham, and Oneida, Idaho. The program falls under the Rural Home Loan Partnership program and provides very low interest loans for new single family homes in small rural towns.

BankAmerica has also taken an active role in developing farm worker housing. BACDB has provided financing to rural non-profit developers, many of whom provide housing and other services for farm workers. Non-profit groups include self-help housing providers, such as Self-Help Enterprises, Rural California Housing Corporation, and Community Housing Improvement Program. BACDB has also provided financing for subdivision development for such developers to support single-family development and construct multi-family housing for farm workers. BACDB has also worked with the USDA-RD at state and national levels and has pursued joint funding opportunities for their Section 514/516 farm worker housing rental program. BACDB has been named as the only nationally-approved lender for the USDA-RD Business and Industry Guarantee Program and is also a participant in its Community Facilities Program. Through the Business and Industry Guarantee Program, BACDB recently committed \$3.5 million for a construction/term loan to construct a 200-unit facility for seasonal farm workers. The facility will provide dormitory-style housing and recreational and educational facilities to farm workers in Lodi, CA. BACDB is pursuing at least one other similar, but smaller project, also in California.

BankAmerica and BankAmerica Foundation participate in rural development initiatives through national and regional intermediaries, including the Rural Community Assistance Corporation, whose Loan Fund includes a \$1 million investment from Bank of America and grant support.

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of \$80,000 in 1996 and \$100,000 each in 1997 and 1998, Rural Local Initiatives Support Corporation ("Rural LISC") Program, which includes grant funding of \$100,000 each in 1997 and 1998, and Rural Development Finance Corporation, which includes grant support of \$50,000 each in 1996 and 1997. BankAmerica also has a seat on the Board of Directors of these organizations or a bank representative on an advisory committee. The Director or Executive Director of each of these organizations serves on the Rural 2000 National Advisory Committee.

*Community Development
Corporations*

Numerous commenters praised BACDB's work in California, particularly in the area of affordable housing, which they believe to be one of California's most critical needs. Commenters asserted that the needs of California are significantly different from the needs of NationsBank's existing markets in this regard, maintaining that California has a very expensive urban housing market and more critical needs for affordable multi-family housing, and suggesting that NationsBank lacks the necessary expertise in this area. In addition, commenters asserted that BACDB does not compete with the private sector, but provides it with critical capital for economic and housing development that gives priority to low-income people. They believed that extending the operations of NationsBank's CDC into California for purposes other than making equity investments would be "unproductive because of the state's thriving nonprofit sector" and expressed concern that NationsBank's CDC would compete with non-profit housing developers. Commenters requested that BACDB and its staff, which they believe has extensive experience in assessing and meeting local needs, be retained.

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NationsBank and BankAmerica recognized the value and high regard in which commenters hold BACDB and its accomplishments and stated that the merged entity will retain BACDB. Nevertheless, NationsBank noted that it offers, through its general market organizational structure, products and services similar to those offered by BACDB. NationsBank indicated that NationsBank CDC is the largest bank-owned community development corporation in the country. It is a for-profit entity and it is the only financial institution in the country that serves as a "hands on" developer and owner of affordable housing developments in LMI communities. NationsBank reported that its CDC has developed or redeveloped nearly 14,000 units of affordable housing with total investments exceeding \$300 million. NationsBank stated that the CDC serves as an innovative source of equity, concept, design, marketing, and project management for residential and commercial development in urban and distressed neighborhoods. NationsBank reported that NationsBank CDC works in areas where affordable housing needs are the greatest and partners with neighborhood development organizations, for-profit developers, local and federal government agencies, and financial intermediaries. According to NationsBank, NationsBank CDC's philosophy is to add capacity to, and to share responsibilities with, nonprofits, and not to displace existing community development corporations that are adequately meeting local community development needs. NationsBank CDC also provides debt or equity financing to a number of non-profit community development corporations around the nation through its national or local partnerships or programs.

Philanthropic Activities

Commenters expressed concern that the BankAmerica Foundation be

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retained and remain in California. They expressed apprehension at the non-profit structure in California would be deprived of a vital resource if the Foundation were moved to Charlotte. Commenters asserted that BankAmerica had already committed to \$40 million in annual charitable contributions and that 25% of that amount was targeted to activities in housing and economic development. Greenlining Institute criticized both organizations' charitable giving as "unduly modest," asserting that it amounts to only 1% of pre-tax earnings, and that only a "limited amount" is targeted to the underserved.

NationsBank stated that the combined organization will commit at least \$100 million to charitable contributions, including the BankAmerica Foundation's commitment of \$40 million and the NationsBank Foundation's commitment of \$60 million. NationsBank noted that historically, 10-20% of the grants and charitable contributions made by both foundations have been allocated to community development.

\$350 Billion CRA Pledge

On May 20, 1998, NationsBank and BankAmerica unveiled a \$350 billion, 10-year pledge to community development lending and investment. The pledge includes specific lending and investment goals for affordable housing, small business, consumer lending and economic development, and a commitment to acquire, build, or rehabilitate 50,000 affordable housing units during the next 10 years. This initiative was based on and expands the \$140 billion community development goal established by BankAmerica in 1997. The pledge includes

- \$180 billion for small businesses, including conventional and government-assisted loans and investments in small business investment corporations, minority business venture capital funds, and other products,

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- \$115 billion for affordable housing, including single- and multi-family lending and investments to low- and moderate-income borrowers, low- and moderate-income neighborhoods, and minority applicants,
- \$25 billion for economic development, including loans and investments to non-profit organizations such as community development corporations,
- \$30 billion for consumer loans, including home-related loans for borrowers below median income and other auto and consumer loans for borrowers with an annual household income at or below 80% of median income As a side note, credit card borrowing is not included in this commitment,
- Annual meetings between senior-level management of the combined bank and community organizations at the local and state levels to discuss results,
- Annual report of results,
- \$10 billion in lending and investments to stimulate affordable housing, job creation and economic opportunities in rural areas and Indian Country,
- \$2 billion in loans and investments to support the growth of community development intermediaries, and
- Specific goals, to be established subsequent to the merger, for special purpose lending to organizations such as child care facilities, religious and educational institutions, non-profit organizations and community foundations

NationsBank also pledged that the newly-formed corporation will form an Office of Community Development Policy Advocacy to support national and regional public policy efforts that advance community development objectives

Criticisms — Numerous groups and individuals criticized the pledge for not

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including specific dollar goals for each state, region, and locality, for not providing details as to the particular products or programs included in the pledge, for not indicating the populations, communities, or needs to which such products or programs are to be targeted, for not providing a plan describing the means to be used to achieve the goals outlined, for not being enforceable and lacking appropriate accountability, and for refusing to sign CRA agreements with individual local groups. Several groups requested that NationsBank guarantee that the level of funding for existing programs be either increased or at least maintained at current levels, and some requested the inclusion of additional items or programs.²³ Some groups charged that because the pledge lacks specifics as to programs and goals, that it could be met by simply continuing existing programs and suggested that, depending on which kinds of loans the new organization chooses to include in its reports on its progress toward meeting the broad goals in the pledge, suburban and primarily white middle or upper class individuals and areas could be the primary beneficiaries. Those critical of the pledge alleged that the community needs of their particular community group, population, geographic, or economic segment, would not be met without a written agreement.

²³ For example, the National Association of Development Organizations ("NADO"), Washington, DC, requested that NationsBank and BankAmerica make additional commitments to support economic development in rural and small metropolitan areas. This group asked that the combined organization support local economic development at the same level that BankAmerica currently supports affordable housing, which it understood to be \$600 million for 1998. The group requested \$600 million in economic development support above and beyond both BankAmerica's and NationsBank's current involvement in the SBA's 7(a) and 504 and USDA Business and Industry Guaranteed Loan Program, for a period of 10 years. Further, the group requested that the new organization continue BankAmerica's pledge to provide \$500 million to rural America over the next three-and-one-half years as the first USDA certified lender under the Business and Industry Guaranteed Loan Program. Finally, the group requested that NationsBank create a new position of director of economic development (such as currently existing for affordable housing at BankAmerica) to focus on higher risk small business development issues. NationsBank responded that it would be happy to discuss these matters, but indicated that such activities were part of the \$350 billion pledge.

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One group, the National Community Reinvestment Coalition ("NCRC"), Washington, DC, asserted that comprehensive community reinvestment plans explaining how the combined organization will abide by CRA after "significant institutional changes in decision-making, branching, and other merger-related alterations in basic operations," should be required as part of the merger applications process. NCRC further proposed that such plans outline in detail how the merged organization intends to "preserve and strengthen the level of CRA lending, investments, and services in all geographical areas they serve," that such plans constitute a starting point for both the public and the regulatory agencies to assess the adequacy of the prospective CRA plans, in effect, creating a Strategic Plan. NCRC further recommended that the Federal Reserve Board could "mandate or recommend changes" to the plan in its approval Orders, and suggested that the plans would become the basis for community groups to enter into partnerships with the banks.

NationsBank's Response — NationsBank responded that it had made a deliberate decision to establish this goal at a national level and not to itemize the commitment by group, product, or region. NationsBank noted that existing Interagency Guidelines neither require nor enforce such agreements and expressed the belief that itemization of the commitment by group, product, or region is unworkable and unnecessary for several reasons:

- Written agreements are unnecessary to ensure responsiveness to local needs. NationsBank indicated that both organizations have built their respective community development programs with input and participation from hundreds of community-based organizations and that they maintain on-going contact with such organizations. NationsBank further maintained that both organizations regularly update their respective

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strategies to reflect the evolving needs and changing input, and that the organizations' records demonstrate local innovation and flexibility. Consequently, NationsBank concluded that written agreements are not necessary.

- Both companies' historical CRA records further demonstrate that such agreements are unnecessary. NationsBank stated that, as a general matter, it has consistently declined to enter into such agreements, and noted that both organizations' subsidiaries subject to CRA have received ratings of "Outstanding" and have produced results in both community development lending and investments that they believe lead the market.
- Individual written agreements are impractical in megamergers. NationsBank stated that it has received proposals for written agreements from more than 100 community-based organizations since the merger announcement and indicated that each proposed agreement includes different goals and benchmarks, covers different and often overlapping geographies, requires different monitoring, and in many cases conflicts with requirements proposed in other agreements. NationsBank expressed the belief that no one community group can speak for the entire community and that fairly selecting groups with which to enter into written agreements would be an impossible task. NationsBank asserted that managing a "web of agreements" would be an impossible task and that it would divert resources from activities better employed directly for community development.
- Detailed local reporting included as part of the pledge will provide the local accountability inherent in the demand for local goal setting. NationsBank indicated that the pledge already contains a commitment to public accountability because it calls for NationsBank to provide the information needed to assess local performance to community groups. The information is to be provided annually at the local, state, and

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national levels, and is to include details by product, geographic, and demographic distribution

- Demand for sound credit and investment opportunities is not limited to the amount of a written commitment NationsBank noted that community needs change over time and expressed the belief that "arbitrary allocation" of credit based on a one-time static analysis would result in needs, which evolve and emerge subsequent to this analysis, being unmet NationsBank concluded that distribution of lending and investment should be determined by individual market needs and demand
- The combined organization will continue to be subject to on-going regulatory supervision and examination of its community reinvestment efforts NationsBank noted that existing regulations provide for performance assessment at MSA, state, and charter levels and that they include input solicited from community-based organizations

NationsBank stated that the \$350 billion pledge includes and extends the \$140 billion community development goal announced by BankAmerica in 1997 and confirmed that it will honor all binding agreements into which BankAmerica has entered This includes a \$150 million pledge which BofA FSB made in Hawaii in connection with its acquisition of Liberty Bank in 1994 This four-year commitment was designed to provide \$150 million in residential mortgage loans for properties located on Hawaiian Home Lands property through the FHA 247 program Despite the sale of its depository branches in Hawaii, BofA FSB indicated that it would continue the pledge, for it will continue lending operations in Hawaii through its BofA Mortgage Group's activities

The Board considers CRA agreements to be agreements between private parties and has not facilitated, monitored, judged, required, or enforced

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agreements or specific portions of agreements, even if the agreements are entered into the record by the banking organization. Staff notes that NationsBank remains obligated to meet the credit needs of its entire community, including LMI areas, with or without private agreements, and that its depository subsidiaries will be subject to ongoing supervision for CRA by the appropriate regulatory agencies.

CRA Records

NationsBank — NationsBank had ten subsidiaries subject to CRA at the time this application was filed,²⁴ each was rated "Satisfactory" or better for CRA. NationsBank's lead bank, NationsBank, N A ("NationsBank-NC"), Charlotte, NC, representing approximately 97.5% of NationsBank's consolidated assets, was rated "Outstanding" for CRA at its most recent examination (July 21, 1995). Each of the banks which have been merged into NationsBank-NC had a CRA rating of "Satisfactory" prior to the merger. The 1995 examinations of the then-existing NationsBank subsidiaries were performed under the "old" CRA examination procedures.

Although several commenters charged that the Board cannot rely on previous CRA examinations because they are "stale," staff notes that the Board considers an institution's historical record, supplemented by

²⁴ Staff notes that NationsBank has been merging its subsidiaries in its various states into its Charlotte bank, in accordance with the Interstate Banking and Branching Efficiency Act of 1994 ("IBBEA") which took effect in July, 1997. As of the filing of this application, NationsBank had merged all of its East Coast depository subsidiaries, except those in Kentucky and Tennessee, and all of the former Boatmen's subsidiaries, except those in Texas and Superior Federal Bank, F S B ("Superior Federal"), into the Charlotte bank. NationsBank subsequently sold Superior Federal and merged Sunwest Bank of El Paso and Boatmen's National Bank of Austin into the Charlotte bank. NationsBank-NC currently includes 15 of its 17 markets in its assessment areas (i.e., Maryland, Washington, DC, Virginia, North Carolina, South Carolina, Georgia, Florida, Arkansas, Iowa, Illinois, Kansas, Missouri, New Mexico, Oklahoma, and Texas), NationsBank has yet to merge the former Barnett Banks, located in Florida, where NationsBank already has a presence, and NationsBank of Tennessee.

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information provided by the institution, in making its decision. Staff further notes that it has extensively reviewed NationsBank's CRA record in connection with previous applications.

The OCC commenced CRA examinations of NationsBank's subsidiaries in May of 1998, and indicated that it will take until approximately the end of 1999 to complete this examination. As of the date of this memorandum, the OCC had completed its examination of NationsBank's assessment areas in the middle and upper South (i.e., North Carolina, South Carolina, Virginia, Maryland, Washington, DC, and the multi-state MSAs in those areas). The OCC stated that it does not anticipate releasing examination results for the various states as it completes its review, but will wait until it has completed its examination of the entire franchise.

The chart below shows the CRA ratings of NationsBank's subsidiaries at the time this application was filed.

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Name	Assets \$B/% 3/31/98	CRA Rating/ Date	Agency	Comments
NationsBank, N A (Carolinas) ("NationsBank-NC") Charlotte, NC	\$216 4/ 77 9%	Outstanding 07/21/95	OCC	Currently operates in 14 states and DC, includes all of NationsBank's East Coast depository subs (except TN, KY, and Barnett) and all former Boatmen's subsidiaries NationsBank of Texas, NA, merged into NationsBank-NC 5/6/98, as the result of a court decision allowing merger of Texas banks into banks based in other states, Boatmen's-TX and Sunwest-TX were also merged into the NC bank
NationsBank of Tennessee, N A ("NationsBank-TN"), Nashville, TN	\$6 0/ 2 1%	Outstanding 07/21/95	OCC	
NationsBank of Kentucky, N A ("NationsBank-KY"), Hopkinsville, KY	\$0 2/ 0 1%	Satisfactory 07/21/95	OCC	To be sold, anticipated closing date 08/21/98
NationsBank of Delaware, N A ("NationsBank-DE"), Dover, DE	\$6 7/ 2 4%	Satisfactory 07/21/95	OCC	Credit card bank
NationsBank, N A (Glynn County)("NationsBank-Glynn Co "), Brunswick, GA		Outstanding 04/22/96	OTS	Thrift acq 04/97 resulting from C&S/Sovran deal in litigation since 1991
Sunwest Bank of El Paso ("Sunwest- TX"), El Paso, TX*	\$0 6/ 0 2%	Outstanding 07/08/96	FDIC	Boatmen's Bancshares, Inc , acquisition, 12/96
Boatmen's National Bank of Austin ("Boatmen's-TX"), Austin, TX*	\$0 1/ 0 04%	Satisfactory 12/31/94	OCC	Boatmen's Bancshares, Inc , acquisition, 12/96
Barnett Bank, N A ("Barnett"), Jacksonville, FL	\$46 3/ 16 7%	Outstanding 12/31/96	OCC	Barnett Banks, Inc , acquisition, 12/97
Community Bank of the Islands ("CBI"), Sanibel, FL	\$0 1/ 0 04%	Outstanding 1/31/96	FRS	Barnett Banks, Inc , acquisition, 12/97
Superior Federal Bank, FSB Ft Smith, Arkansas	\$1 3/ 0 5%	Outstanding 8/8/94	OTS	Sold 04/98

CRA Outstanding \$270 B = 97 5% of assets

* Subsequently merged into NationsBank-NC

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The OCC examined NationsBank's East Coast subsidiaries for CRA in July, 1995, using the "old" CRA examination procedures, and assigned each of them a rating of "Satisfactory" or better ²⁵ At that time, the OCC examiners found that overall, NationsBank demonstrated strong efforts to ascertain and help meet community credit needs and that the directors and senior management have shown a strong commitment of support as evidenced by the dedication of considerable resources to these efforts Further, examiners indicated that NationsBank has developed and introduced products and services to help meet the most pressing of identified credit needs ²⁶

Examiners did not find evidence of prohibited or illegal credit practices in any of the examinations of NationsBank subsidiaries, nor did they note any practices in the subsidiaries that discouraged credit applications None of the subsidiaries were found to be in non-compliance with antidiscrimination laws and regulations None of the subsidiaries were found to have problems with the opening and closing of branch locations, and none of these branch actions was found to have adversely affected the accessibility of the institutions' delivery systems, particularly to LMI individuals or geographies No disparate treatment was found to exist

With respect to marketing, examiners noted that NationsBank has used a

²⁵ Since that time, NationsBank has combined all of its former East Coast subsidiaries into its lead bank in Charlotte except, as indicated in the chart above, its Kentucky subsidiary which it intends to sell, its credit card bank, and its Tennessee bank Its Glynn County, Georgia, bank was only recently acquired, C&S/Sovran had a contract to acquire First Federal Savings Bank of Brunswick, Georgia, which NCNB believed was not binding In 1991, the thrift sued NationsBank to honor the deal, and the courts agreed that the contract had been binding NationsBank appealed the decision, after several years of litigation, NationsBank acquired the thrift in April, 1997

²⁶ These products include secured and unsecured consumer loans (auto, miscellaneous goods and services, debt consolidation, boats), home improvement/rehabilitation loans, residential mortgage loans (single-family and condominium), agricultural loans, small business loans, commercial vehicle and equipment leases, and real estate development loans

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wide variety of approaches to market its products and services to the communities, particularly in the large urban areas. Examiners also noted, in most cases, strong performance relative to the types of credit offered and the loan volume, including government-related programs. Examiners further commented on the strong performance by the Florida and Georgia subsidiaries (which have since been merged into NationsBank-NC) in 1994 with respect to low- and moderate-income originations, loan-to-deposit ratios, and overall lending trends. According to examiners, the other states reflected reasonable distribution patterns. Moreover, examiners indicated that the NationsBank fair lending program reflected strong, commendable, proactive efforts to promote fair and equal treatment to loan applicants. Finally, examiners stated that NationsBank has demonstrated active efforts to promote economic growth and revitalization in its communities, quite often in a leadership role.

Several corporate-wide CRA initiatives through July 1995 were recognized by the OCC, among them

- NationsBank Community Development Corporation - This CDC was formed in 1991 and works in conjunction with community based organizations to provide long-term housing alternatives to LMI buyers. It has participated in several states where NationsBank operates depository subsidiaries, primarily on the East Coast and Texas.
- Small Business Investment Corporation - This corporation makes equity investments in economically disadvantaged small businesses and businesses located in historically underserved areas.
- Nations Housing Fund - This partnership between NationsBank and the Enterprise Social Investment Corporation was established in 1993 to provide equity capital for the financing of affordable housing developments.
- NationsBank Mortgage Capital Corporation - This NationsBank

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subsidiary was formed in 1994 as a creative way to expand the financing market for affordable multi-family projects

- National partnerships through the National Initiatives Unit - NationsBank has forged partnerships with several national community groups to identify credit needs and to provide vehicles for the development and delivery of products and programs to help meet those needs
- Small Business Resource Centers - NationsBank, in partnership with the Small Business Administration and the Minority Business Development Agency, operates centers across the franchise to assist potential and current small business owners with general and technical information needed to operate a small business
- NationsBank Neighborhoods Program - Established in 1993, this program focuses bank resources on revitalization of target neighborhoods and serves to improve the economic, social, physical, and environmental conditions of underserved, inner-city neighborhoods in cities where NationsBank operates

NationsBank acquired several depository institutions subsequent to its 1995 CRA examination Boatmen's National Bank of Austin ("Boatmen's-TX"), Austin, TX, Sunwest Bank of El Paso ("Sunwest-TX"), Barnett Bank, N A ("Barnett"), Jacksonville, FL, First Federal Savings (subsequently re-chartered as NationsBank, N A , Glynn County, GA), Community Bank of the Islands ("CBI"), Sanibel, FL, and Superior Federal Bank, FSB, Ft Smith, AR All were rated "Satisfactory" or better at their most recent CRA examinations by their respective supervisory agency The performance of these institutions is not reflected in the OCC's findings through July 1995

Nationsbank has undertaken several new initiatives and enhanced many of those already in place since the 1995 examination, some of which are

summarized below

- In 1996, a partnership with Neighborhood Assistance Corporation of America was formed to provide \$500 million in residential mortgage loans to new home buyers. The funding for this program was increased by \$250 million in 1998. Targeted markets include Atlanta, Baltimore, Charlotte, Washington, DC, Jacksonville, Memphis, Buffalo, Kansas City, Little Rock, Albuquerque, San Antonio, and Tampa-St Petersburg. To date, more than 350 low-income families have been helped into homes through the program.
- NationsBank Mortgage Corporation made \$140 million in below-market rate mortgage funds available in 1996 to low-and moderate-income borrowers. This amount was increased in 1997 to \$240 million, and through 1997, more than 7,700 families have accessed the special financing.
- The SBA named NationsBank as the top bank in number of loans approved for fiscal year 1997.
- The NationsBank Community Development Lending unit was expanded from the Mid-Atlantic region in 1997 to St. Louis and to Florida and Texas in 1998. This unit provides debt financing to real estate projects that are both economically viable and that benefit communities with household incomes of 80% or less of median income.
- In 1996, NationsBank established the \$25 million NationsBank Community Development Financial Institutions (CDFI) Initiative to lend to and invest in financial intermediaries, since its establishment, it has invested \$37 million.
- NationsBank increased the Nations Housing Fund, which invests in tax credit projects, from \$100 million to \$200 million in 1996. NationsBank has characterized this fund, which is administered by the Enterprise Social Investment Corporation, as one of the largest single-investor funds.

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in the nation

- In 1997, NationsBank began direct tax credit investments for affordable housing projects with for-profit and not-for-profit developers. These projects are located in 10 states and have produced 4,000 units of affordable rental housing for a total of \$140 million.
- The NationsBank Small Business Investment Company expanded into St. Louis in 1997 and Jacksonville, Florida in 1998. This company provides investments of \$50,000 to \$500,000 to small and minority-owned companies that have annual net income of less than \$2 million and net worth of less than \$6 million.
- The NationsBank Community Development Corporation ("CDC"), characterized by NationsBank as the largest bank-owned CDC in the country, opened new offices in St. Louis, Kansas City, Nashville, and Tampa-St. Petersburg in 1997. The CDC has developed or redeveloped nearly 14,000 units of affordable housing with total investments of more than \$300 million.

Bank of America's CRA

Records

BankAmerica Corporation operated five banking subsidiaries in 1997, as the chart below shows, each was rated "Outstanding" at its latest CRA examination.

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Name	Assets (\$B)/% 3/31/98	CRA Rating/ Date	Agency	Comments
Bank of America National Trust and Savings Association ("BofA-NTSA"), San Francisco, CA	\$240 4/ 89 6%	Outstanding 09/30/97	OCC	Lead bank, operates deposit-taking branches in 9 states and two multi-state MSAs Also operates a global payments office in New York City and a trust company in Florida
Bank of America, NA ("BofA-AZ"), Phoenix, AZ	\$6 7/ 2 9%	Outstanding 10/31/96	OCC	Credit card bank
Bank of America Texas, NA ("BofA-TX"), Irving, TX	\$5 3/ 2 0%	Outstanding 10/31/96	OCC	
Bank of America, FSB ("BofA FSB"), Portland, OR	\$15 8/ 5 3%	Outstanding 6/9/97	OTS	All deposit-taking branches sold (Hawaii 12/05/97 and in-store branches in the Chicago MSA 01/31/98) Other divisions include BankAmerica's mortgage company and a community development division, which generally complements the activities of Bank of America Community Development Bank and operates in states other than California
Bank of America Community Development Bank (BACDB), Walnut Creek, CA	\$0 4/ 0 2%	Outstanding 8/27/97	FDIC	Leader for community development efforts for all BankAmerica banking units, activities are focused on SBA lending, affordable housing lending, community development services, operates mainly in California

Bank of America National Savings and Trust Association ("BofA-NTSA" - total assets of \$240 4 billion), San Francisco, CA, is the lead bank It operates depository subsidiaries in nine states and two multi-state MSAs Its global payments center in New York City, takes no retail deposits, but receives CRA credit for residential loans originated by the corporation's mortgage company, a division of Bank of America, FSB ("BofA, FSB"), Portland, OR BofA-NTSA was examined by the OCC using the revised

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CRA procedures on September 30, 1997, a rating of "Outstanding" overall, "Outstanding" for the Lending Test, and "High Satisfactory" for both the Investment Test and Service Test. The state-by-state ratings were

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State/MSA	Branches* No./%	Overall Rating	Lending Test	Investment Test	Service Test
Alaska	11/ 0.7%	Satisfactory	Low Satisfactory	Low Satisfactory	Low Satisfactory
Arizona	144/ 8.5%	Satisfactory	Low Satisfactory	High Satisfactory	High Satisfactory
California	990/ 58.7%	Outstanding	Outstanding	High Satisfactory	High Satisfactory
Idaho	22/ 1.3%	Satisfactory	Low Satisfactory	High Satisfactory	High Satisfactory
Illinois	1/ 0.7%	Satisfactory	Low Satisfactory	High Satisfactory	Low Satisfactory
Nevada	37/ 2.2%	Satisfactory	Low Satisfactory	High Satisfactory	Low Satisfactory
New Mexico	41/ 2.4%	Satisfactory	Low Satisfactory	Low Satisfactory	High Satisfactory
New York**	1/ 0.7%	Satisfactory	Low Satisfactory	High Satisfactory	Low Satisfactory
Oregon	39/ 2.3%	Satisfactory	High Satisfactory	High Satisfactory	Low Satisfactory
Washington	291/ 17.2%	Outstanding	High Satisfactory	Outstanding	Outstanding
Las Vegas, NV - Mohave, AZ	54/ 3.2%	Satisfactory	Low Satisfactory	Low Satisfactory	High Satisfactory
Portland, OR - Vancouver, WA	56/ 3.3%	Outstanding	Outstanding	Outstanding	High Satisfactory
Total	1,687/100%	Outstanding	High Satisfactory	High Satisfactory	High Satisfactory

* Branches include free-standing offices and in-store branches, but do not include ATM's

** Global payments center which conducts no retail transactions, receives CRA credit for residential loans originated by BofA FSB and provides community development investments and services

At its last CRA examination in June, 1997, BofA FSB, Portland, OR, was rated "Outstanding" by the OTS, using procedures prescribed by the Interstate Banking and Branching Efficiency Act ("IBBEA") of 1994, which

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requires that the institution's CRA performance in each state and multi-state MSA be evaluated separately. The state ratings are shown below:

State/MSA	Branches No./%	Overall Rating
Hawaii	37/37 8%	Satisfactory
Chicago CMSA	60/61 2%	Outstanding
California	1/1 0%	Outstanding
Indiana	ATM Only	Satisfactory
Total	98/100%	Outstanding

At the time of its examination, BofA FSB had its home office in Portland, administrative offices in San Francisco, CA, and operated deposit-taking branches in Hawaii and deposit-taking branches located in grocery stores in the Chicago MSA. BofA FSB also housed BankAmerica's mortgage company, its manufactured housing division, a commercial lending division having one loan production office in Atlanta, GA, and a community development division whose activities generally complement those of Bank of America Community Development Bank ("BACDB"), Walnut Creek, CA. Since that examination, BankAmerica sold all of its retail branches and its manufactured housing division, but has retained the thrift's charter. NationsBank indicated that no long-term decisions have as yet been made regarding the charter, consequently, BankAmerica will retain the charter until such time as business plans change. NationsBank stated that a transition team has begun an analysis of how NationsBank's mortgage operations and those of BankAmerica may be integrated, noting that until that analysis is complete and a business plan has been developed, the two mortgage operations will continue to co-exist.

The CRA Public Evaluations of BankAmerica's subsidiaries subject to

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CRA indicate that the retail banking subsidiaries generally provide corporate products and all subsidiaries generally complement and support each other's lending activities. Therefore, staff reviewed the CRA records of BankAmerica's five subsidiaries as a comprehensive unit.

Examiners did not find evidence of prohibited or illegal credit practices in any of the examinations of BankAmerica subsidiaries, nor did they note any practices which would discourage credit applications. Examiners indicated that all of the subsidiaries were in compliance with antidiscrimination laws and regulations and found no evidence of disparate treatment. Examiners found the branch closing policies to be acceptable and indicated that the subsidiaries follow the policies. Examiners reviewed the subsidiaries' records of branch closings and found no evidence that any branch closing adversely affected accessibility to the subsidiaries' retail delivery systems, particularly to LMI individuals or geographies. All of the subsidiaries were found to have effectively determined the credit needs of their respective assessment areas, including LMI neighborhoods, and to have adequately responded to the identified credit needs.

Numerous products and services specifically developed to meet the community credit needs have been initiated at the corporate level for use in the banking subsidiaries. These products and services include

- BankAmerica Special Income Credit ("B*A*S*I*C") - Program tailored to meet the credit needs of LMI individuals using flexible underwriting criteria
- Neighborhood Advantage Loan - Affordable residential mortgage product for both purchase money and refinance transactions with low down payment options and comprehensive home buyer education
- Spanish Loan-by-Phone - Enhances delivery of consumer loan products to California's largest ethnic minority by offering information and application services to Spanish-speaking customers

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- Loans for Customers with Disabilities ("ADA Loans") - Provide financing for the purchase and/or retrofitting of vehicles, personal property, and homes to accommodate the needs of individuals with disabilities
- Advantage Business Credit - Targets small and minority-owned businesses with loans or lines of credit and provide applicants with responses within 3 days of application
- Advantage Business Credit Express Lines - Small, unsecured revolving lines of credit to accommodate short-term working capital needs, with optional overdraft protection service This product also features a simplified application and quick approval process
- Minority-Owned Business Enterprise and Women-Owned Business Enterprise Financing - Targets small businesses that are at least 51% owned and operated by one or more individuals who are minorities or women
- Credit Card Services - Bank of America, NA ("BofA-AZ"), Phoenix, AZ, BankAmerica's credit card bank, worked with its affiliates to develop a small business revolving loan program that could be accessed with a credit card BofA-AZ also originated a substantial volume of consumer credit card accounts in its affiliates' assessment areas, including the Phoenix MSA
- Neighborhood Housing Services of America ("NHS") Initiatives - BofA-AZ provided NHS, a national nonprofit organization providing low-cost financing for owner-occupied single family home purchases or rehabilitations in low-income neighborhoods, with an innovative \$4 million loan commitment, repayable over 20 years, to fund mortgage debt instruments issued by NHS in central Phoenix BofA-AZ further enhanced the affordability of the loan program by providing a \$60,000 grant to buy down the cost of the mortgages

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- **Pre-Development Affordable Housing Financing - BofA FSB** used advances totaling \$56.4 million to issue forward commitments for permanent financing on affordable housing projects prior to their development through the Community Investment Program of the Federal Home Loan Bank of Seattle ("FHLB-Seattle"). The lower interest rates on these advances allow BofA FSB's Community Development Division to underwrite permanent financing on affordable housing projects at below-market rates.
- **Affordable Housing Program ("AHP") Grants - FHLB-Seattle** also approved \$2.7 million in AHP grants sponsored by the BofA FSB for 21 different projects designed to provide 780 units of affordable housing, with 726 of the units reserved for very low-income families.

HMDA Records

Staff reviewed HMDA on a combined basis for NationsBank's depository subsidiaries, NationsBanc Mortgage Corporation, Boatmen's Mortgage Corporation, and Boatmen's other HMDA reporting subsidiaries for 1995, 1996, and 1997.²⁷ Although NationsBank did not acquire Boatmen's until 1996, staff treated the HMDA data as if the merger had occurred in 1995 in order to obtain a consistent comparison. Staff updated the HMDA data for Barnett, which staff presented to the Board in December, 1997, in connection with NationsBank's acquisition of Barnett Banks, Inc., staff notes that at the time the current application was filed, NationsBank had not merged Barnett into its Charlotte bank. For BankAmerica, staff combined the data for BofA NT&SA, BofA-TX, and BofA FSB, except for Hawaii, where BofA FSB was the only depository subsidiary having branches in that state. As noted earlier, BankAmerica's mortgage company is housed in its thrift operation.

²⁷ Boatmen's subsidiaries included banks operating under the Boatmen's name, as well as banks operating under the Sunwest and Bank IV names.

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Staff reviewed NationsBank's data for each state in which it currently has depository branches located in MSAs, and for the District of Columbia. The states under review are North Carolina, Arkansas, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Missouri, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Staff notes that NationsBank has a limited presence in Kentucky (where NationsBank's subsidiary is to be sold) and in Illinois (where NationsBank operates only in a small part of the state in the St. Louis area). Staff reviewed BankAmerica's HMDA data for eleven states: California, Alaska, Arizona, Hawaii (where its only retail branches, branches of BofA FSB, have been sold), Idaho, Illinois (where BofA NT&SA has only one branch which engages primarily in wholesale operations, and where it has sold the branches of BofA FSB), Nevada, New Mexico, Oregon, Texas, and Washington. For each organization, staff also reviewed selected MSAs of interest to commenters.

As a general matter, the application volume for both organizations generally increased in 1996, but declined in 1997 and the application volume for the aggregate increased each year, except in Hawaii, where aggregate volume increased in 1996 and declined in 1997. NationsBank's application volume decreased in Arizona and New Mexico, increased slightly in the District of Columbia and increased dramatically in Iowa (from 294 applications in 1996 to 456 applications in 1997, an increase of 55%). BankAmerica's volume decreased in Alaska, but significantly increased in Idaho, apparently due to the addition of an MSA in 1997. See the separate supplemental book containing HMDA and CRA summary charts and detailed lending tables available in the Secretary's Office, the Division of Bank Supervision and Regulation, the Legal Division, and the Division of Consumer and Community Affairs.

Staff reviewed lending patterns in general, and with specific attention to

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lending to blacks, hispanics, LMI census tracts, and LMI individual
Although a number of commenters expressed concerns about lending to
Asians, staff notes that Asians represent less than 5% of the population in
most markets under review, therefore, staff evaluated lending to Asians in
the two markets having significant concentrations of Asians, California and
Hawaii, both in BankAmerica's areas. In addition, a number of
commenters expressed concerns regarding lending to American Indians.
Staff notes that HMDA data is reported showing applicant race for areas
included in MSAs. Most concentrations of American Indians are found in
rural areas, consequently, lending to this population is generally not
reflected in HMDA data. For the states under review, only three, Arizona
(2.8%), Oklahoma (5.6%), and New Mexico (3.7%) had Native American
populations exceeding 2%.

NationsBank — NationsBank's 1997 application volume was greatest in
Florida and Texas (34,519 and 31,937 applications, respectively).²⁸
NationsBank reported 16,434 applications for North Carolina, the state next
in terms of volume. NationsBank's volume in only three other states
exceeded 10,000 (Virginia, South Carolina, and Georgia), three states'
volumes exceeded 5,000 applications (Missouri, Tennessee, and Maryland),
four states (Arkansas, Oklahoma, Kansas, and New Mexico) had
application activity exceeding 1,500 applications, and Iowa and the Illinois
and Kentucky assessment areas reported fewer than 700 applications each.

Eight of NationsBank's seventeen markets had black populations
approximating or exceeding 20% (North Carolina, Georgia, Kentucky,
Maryland, South Carolina, Tennessee, Virginia, District of Columbia),
ranging from 19.7% in Virginia, to 65.3% in the District of Columbia.

²⁸ Staff notes that Barnett's 1997 application volume in Florida was 54,224.

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NationsBank's HMDA data show that the percentage of black applicants declined in 1997 in eleven of its sixteen states and the District of Columbia. The percentage of black applicants remained stable in Kansas and in NationsBank's Kentucky assessment area, but increased in both Florida (from 8.5% in 1996 to 9.3% in 1997) and Georgia (from 23% in 1996 to 25.3% in 1997). Iowa is an exception, the total number of applications increased dramatically in 1997 (from 294 to 456) and the number of black applicants increased from fewer than 10 in both 1995 and 1996 to 24 in 1997, making conclusions with respect to black applicants difficult to draw. The percentage of black applicants approximated blacks' representation in the population in Georgia and exceeded it in Maryland, both states having a relatively high concentration of blacks. In addition, NationsBank's percentage of black applicants approximated or exceeded that reported by the aggregate in all states except North Carolina (where NationsBank's percentage was 13.7% and was close to the aggregate's 15%), Oklahoma, South Carolina, and the District of Columbia (where NationsBank's percentage was 38.8% and was close to the aggregate's 40.7%). NationsBank's HMDA data show that its percentage of originations to blacks in 1997 remained stable or increased in four states (Florida, Georgia, Kentucky, and New Mexico), but decreased in the other 12 states and the District of Columbia. In 1997, NationsBank's percentage of originations to blacks approximated or exceeded that reported by the aggregate in seven states (North Carolina, Arkansas, Florida, Georgia, Illinois, Kansas, and Kentucky), and was only slightly less than that of the aggregate in Maryland and Tennessee.

The Denial Disparity Ratio²⁹ for blacks decreased in six states (Illinois,

²⁹ The Denial Disparity Ratio compares the Denial Rate for a particular racial category (e.g., blacks) to the Denial Rate for whites (i.e., Denial Rate for non-white race - Denial Rate for whites).

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Florida, Kentucky, Missouri, New Mexico, and South Carolina), but increased in the other ten states, excluding Iowa NationsBank's denial disparity ratio for blacks exceeded 2 1 in five states (North Carolina, Arkansas, South Carolina, Tennessee, and Texas) and exceeded 2 5 1 in Kansas, Oklahoma, Virginia, and the District of Columbia (where it exceeded 4 1) Staff notes that NationsBank's Denial Disparity Ratios have historically been higher than the aggregate in most of its markets In most cases this is because NationsBank's denial rates³⁰ to blacks exceed the denial rates to blacks for the aggregate in 13 of its states and District of Columbia In six of the 13 states (Florida, Georgia, Illinois, Kansas, Maryland, and Missouri), denial rates to hispanics and whites also exceeded those of the aggregate Such patterns may indicate that an institution engages in mass marketing of its home mortgage-related products, particularly of home improvement loans, and/or that the institution has more stringent underwriting standards for its products As noted above, NationsBank's applications from blacks exceeded the aggregate in 10 of its states and the District of Columbia

Only three of NationsBank's states have hispanic populations exceeding 6% Florida (12 6%), New Mexico (40 9%), and Texas (25 7%) The District of Columbia has a hispanic population of 5 2% and in the other 13 states, hispanics represent 3 6% or less of the population In contrast to NationsBank's pattern for black applicants, its HMDA data show that the percentage of NationsBank's applications submitted by hispanics remained stable or increased in all of its markets except New Mexico and the District of Columbia, where the percentage of hispanic applicants decreased somewhat in 1997 There were too few hispanic applicants submitting applications in Illinois, Iowa, and Kentucky to draw conclusions regarding

³⁰ The denial rate compares the number of denials for a group, such as blacks, to the number of applications for the same group (i e denials of black applications ÷ black applications)

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NationsBank's lending patterns in those states NationsBank's percentage of applications from hispanics in 1997 approximated or exceeded hispanic representation in the population in six of the remaining 15 states (North Carolina, Florida, Georgia, Maryland, Oklahoma, and Tennessee) The percentage of hispanics submitting applications to NationsBank approximated or exceeded the percentage reported by the aggregate in all but three markets (North Carolina, Arkansas, and Virginia), but staff notes that NationsBank's percentage of hispanic applicants in North Carolina and Virginia was only slightly less than that reported by the aggregate

Hispanics represented a declining percentage of NationsBank's 1997 originations in only five markets (Kansas, New Mexico, Texas, Virginia, and the District of Columbia), remaining stable or increasing in the remaining twelve markets Originations to hispanics represented a percentage approximating or exceeding that reported by the aggregate in 1997 in seven states (Florida, Maryland, Missouri, New Mexico, Oklahoma, South Carolina, and Tennessee) for NationsBank NationsBank's percentage of hispanic borrowers lagged the aggregate only slightly in Kansas, Georgia, South Carolina, and Texas

The Denial Disparity Ratio for hispanics remained stable or decreased in 1997 in three states (Kansas, Tennessee, and Texas) and the District of Columbia and increased in the rest The Denial Disparity Ratio approximated the aggregate in New Mexico, but exceeded the aggregate in all of NationsBank's other states and the District of Columbia It exceeded 2 1 in North Carolina, Georgia, Kansas, and South Carolina, it exceeded 2 5 1 in Maryland and Oklahoma, and it exceeded 3 1 in Virginia and the District of Columbia As noted above, NationsBank's HMDA data generally shows a higher denial rate for hispanics than the aggregate

NationsBank had only two states in which the American Indian population was more than 2%, Oklahoma (5 6%) and New Mexico (3 7%)

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Staff reviewed NationsBank's HMDA lending to Native Americans in the Tulsa, Albuquerque, and Santa Fe MSAs (where hispanics represented 6.7% of the population, 4.7% of the population, and 2% of the population, respectively) in addition to its lending in Oklahoma and New Mexico. NationsBank received 46 applications from American Indians in Oklahoma and 95 applications from American Indians in New Mexico. Conclusions regarding NationsBank's lending to Native Americans are difficult to draw from Santa Fe data because the number of such applicants reported was so low (10 in 1995, 11 in 1996, and 5 in 1997). In the state of Oklahoma and the Tulsa MSA, the percentage of Native American applicants declined somewhat over the three-year period (from 1.6% of applications in 1995 to 1.0% of applications in 1997 for Oklahoma, and from 2.7% of applications in 1995 to 1.5% of applications in 1997 for Tulsa), a trend also seen in the aggregate. In both Oklahoma and Tulsa, NationsBank's percentage of originations has remained steady (approximately 1.2% in Oklahoma and 1.7% in Tulsa), lagging the aggregate only moderately. NationsBank's Denial Disparity Ratio for American Indians has also declined in both Oklahoma markets since 1995, and while it exceeded the aggregate in 1995 and 1996, for both markets, it compares favorably to the aggregate for 1997 in Oklahoma. Similarly, in New Mexico and Albuquerque, NationsBank's percentage of American Indian applicants has declined between 1995 and 1997, as has the denial disparity ratio. NationsBank's percentage of originations to Native Americans has also declined somewhat in both markets, while that of the aggregate has remained steady (from 2.1% of applications in New Mexico in 1995 to 1.0% in 1997, compared to 1.1% for the aggregate).

NationsBank reported a decreasing percentage of its applications for properties located in LMI census tracts in all states and the District of Columbia except North Carolina, New Mexico, and Tennessee, where the

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percentage remained stable, and Georgia and Kentucky, where NationsBank's percentage of applications for LMI properties increased. This percentage approximated or exceeded that of the aggregate in 1997 for Missouri, Arkansas, Florida, Georgia, Maryland, New Mexico, and Texas. NationsBank's percentage of originations for such properties remained stable or increased in four states (North Carolina, Georgia, Kentucky, and Tennessee), and decreased only slightly in Florida. In 1997, loans to hispanics represented a proportion of NationsBank's total originations approximating or exceeding the percentage reported by the aggregate in nine states (North Carolina, Arkansas, Florida, Georgia, Iowa, Kentucky, Maryland, New Mexico, and Texas). The greatest difference in the percentage of originations for LMI properties was in New Mexico in 1997. In that state, NationsBank reported 21.5% of its originations were for properties located in LMI census tracts, compared to 16.3% for the aggregate.

NationsBank's percentage of applications submitted by LMI individuals remained stable or increased in seven states (Iowa, Arkansas, Georgia, Kentucky, Missouri, Tennessee, and Texas), decreasing in the other 10 markets. The percentage of LMI applicants for NationsBank in 1997 approximated or exceeded that of the aggregate in half of the states (Arkansas, Florida, Georgia, Illinois, Iowa, Maryland, Missouri, and New Mexico), lagging the aggregate somewhat in the other half of the states and the District of Columbia. The percentage of LMI originations to LMI individuals remained stable or increased for NationsBank in 1997 in nine states (Arkansas, Florida, Georgia, Iowa, Kentucky, Missouri, Oklahoma, South Carolina, and Tennessee). NationsBank's percentage of originations to LMI borrowers exceeded that reported by the aggregate in four states (Florida, Georgia, Maryland, and New Mexico). As was the case for LMI properties, the greatest difference was found in New Mexico.

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NationsBank's 1997 HMDA data show that 38.8% of its originations in New Mexico were to LMI individuals, compared to 29.9% for the aggregate

BankAmerica — BankAmerica's application volume was greatest in California (103,107 applications in 1997). Its second-highest volume was reported for the state of Washington (20,708 applications). BankAmerica reported between approximately 13,000 applications and 17,500 applications for Arizona, Texas, and Oregon, between approximately 1,600 and 7,200 applications for Nevada, Illinois, New Mexico, and Idaho, and fewer than 300 applications for Alaska and Hawaii.

The percentage of applications which BankAmerica received from blacks increased only in its small Illinois assessment area (from 2.8% in 1995 to 6.7% in 1997). In all other markets (except Alaska, Hawaii and Idaho, which had too few black applicants to draw conclusions), the percentage of applications received from blacks declined. Nevertheless, BankAmerica's percentage of black applicants approximated that of the aggregate in five states (Arizona, New Mexico, Oregon, Texas, and Washington). Originations to blacks approximated the percentage of black applicants only in Arizona, where 249 blacks accounted for 1.4% of the applications, of which 99 (1%) received loans. The percentage of originations to blacks increased only in Illinois and remained stable in all other markets, except Hawaii and Idaho, where the number of originations to blacks was too small to draw conclusions.

The Denial Disparity Ratio for blacks generally increased in eight states and was not applicable in Hawaii or Idaho, where no black applicants were denied loans, or for Alaska, where only four blacks applied to BankAmerica for loans in 1997. The Denial Disparity Ratio for blacks in 1997 was higher than 2.1 in three of BankAmerica's states (California,

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Arizona, and New Mexico) and nearly 2.1 in Oregon. BankAmerica's Denial Disparity Ratio for blacks ranged between 1.41 and 1.721 in all other states. The Denial Disparity Ratio for blacks approximated the aggregate in Texas (1.511 for BankAmerica and 1.551 for the aggregate) and was slightly less than the aggregate in Washington (1.681 compared to 1.721 for the aggregate). For the remaining six states, while not out of keeping with the aggregate, the Denial Disparity Ratios reported by BankAmerica in 1997 were somewhat higher than the aggregate.

The percentage of hispanic applicants reported by BankAmerica decreased in California, Alaska, and Idaho, and remained stable in Oregon. It increased in all other markets except Hawaii, where BankAmerica reported only one hispanic applicant in 1997. It approximated or exceeded the percentages reported by the aggregate in eight of the eleven states: California, Arizona, Idaho, Nevada, New Mexico, Texas, and Washington. New Mexico and Texas have the highest percentages of hispanics (40.9% and 25.7%, respectively) of all BankAmerica's markets. In New Mexico, 37% of BankAmerica's 1997 applications were submitted by hispanics (compared to 33.3% for the aggregate) and 26.9% of its Texas applicants were hispanic (compared to 17.8% for the aggregate). Originations to hispanics increased in Illinois, Nevada, New Mexico, and Texas, remained stable in Idaho, Oregon, Washington, and Arizona, and decreased in California. As in the case of applications, the percentage of BankAmerica's originations to hispanics in 1997 approximated their representation in the population in Texas, and BankAmerica's percentage of originations to this ethnic group approximated or exceeded that reported by the aggregate in Idaho, New Mexico, and Texas.

The Denial Disparity Ratio for hispanics increased in five of the eleven states (California, Arizona, Illinois, Nevada and Washington, although the increase in Nevada and Washington was slight). It exceeded 2.1 only in

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Arizona and California This ratio decreased in four states, Idaho, New Mexico, Oregon, and Texas Nevertheless, BankAmerica's Denial Disparity Ratio for hispanics was more favorable than that reported by the aggregate in six states (Idaho, Illinois, New Mexico, Oregon, Texas, and Washington), including the two having the greatest percentage of hispanics (Texas and New Mexico)

BankAmerica had only two markets where the American Indian population was 2% or more, Arizona and New Mexico Staff reviewed BankAmerica's lending in the Phoenix and Tucson MSAs in Arizona, and in the Albuquerque and Santa Fe MSAs in New Mexico, in addition to reviewing the HMDA data at the state level The American Indian population in the state of Arizona was 2.8% in 1997, 1.9% in the Phoenix MSA, and 2.6% in the Tucson MSA The Native American population in New Mexico is 3.7%, 4.7% in Albuquerque, and 2.0% in Santa Fe Most of BankAmerica's Native American applications were submitted in Arizona (279 in 1997), BankAmerica reported 63 applications from American Indians in New Mexico in 1997 In each of the three Arizona markets, BankAmerica reported a higher percentage of Native American applicants than the aggregate, while in the three New Mexico markets, the percentage of Native American applicants increased slightly and approximated the aggregate BankAmerica's percentage of originations to American Indian applicants approximated or exceeded that reported by the aggregate in both the Arizona and New Mexico markets Although the Denial Disparity Ratio for American Indians reflected in BankAmerica's HMDA data increased in the Arizona markets in 1997, it was substantially less than that reported by the aggregate in that year for the state of Arizona (1.351 for BankAmerica, compared to 2.421 for the aggregate) In New Mexico, the Denial Disparity Ratio decreased somewhat in 1997 but was also less than that reported by the aggregate (1.641 for BankAmerica, compared to

2 68 1 for the aggregate)

Only two of BankAmerica's states had an Asian population exceeding 5%, California (9.5%) and Hawaii (60.6%). In addition to reviewing BankAmerica's lending to Asians in these two states, staff also included the San Francisco MSA, which has an Asian population of 20.1%. In each of these three markets, the percentage of applications which BankAmerica received from Asians increased in each year. In both California and San Francisco, the percentage of Asian applicants reported by BankAmerica approximated or exceeded that reported by the aggregate, and BankAmerica's percentage of originations to Asians exceeded that reported by the aggregate. BankAmerica's Denial Disparity Ratio to Asian applicants increased in both California markets somewhat and was somewhat higher than that reported by the aggregate (1.481 in the state of California in 1997, compared to 1.05 for the aggregate, for example). In Hawaii, BankAmerica's percentage of Asian applicants increased, as did the percentage of originations to Asians. Its percentage of Asian applicants and originations to Asians lagged the aggregate for 1995 and 1996, but exceeded it for 1997. BankAmerica's Denial Disparity Ratio for Asians had approximated the aggregate in 1995 and 1996, but exceeded it in 1997 (1.401 for BankAmerica, compared to 0.891 for the aggregate). Staff notes, however, that BankAmerica sold its retail branches in Hawaii and that the application volume reported by BofA FSB dropped precipitously in that year (from 1,472 applications in 1996 to 163 in 1997).

BankAmerica's HMDA data show an increasing trend in applications for properties located in LMI areas in six markets (Arizona, Hawaii, Nevada, New Mexico, Texas, and Washington). Applications for such properties remained somewhat stable or declined in the other five (California, Alaska, Idaho, Illinois, and Oregon). However, although the percentages of such applications did not approximate either the percentage of LMI tracts

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or population residing in such tracts in any of its markets, BankAmerica received proportionately more applications for LMI properties than the aggregate in four states of eleven, Arizona, Hawaii, Nevada, and Texas, and approximated the aggregate in New Mexico. The percentage of originations to applicants for LMI properties increased or remained stable in four of the eleven states for BankAmerica (Arizona, Hawaii, Texas, and Washington). However, the percentage of BankAmerica's originations approximated or exceeded that of the aggregate in five states (Arizona, Hawaii, Nevada, and New Mexico). In Texas, the difference is notable, in 1997, 22.1% of BankAmerica's originations were for LMI properties, compared to 14.2% reported by the aggregate.

More than 20% of BankAmerica's applications were submitted by LMI individuals. The percentage of such applicants declined somewhat in California, Hawaii, Idaho, and Illinois, but remained stable or increased in the other seven states, approximating or exceeding the aggregate in all but Hawaii and Illinois. BankAmerica achieved the greatest penetration of this economic segment in Texas, where almost 53% of its applicants were LMI individuals (compared to 35.7% for the aggregate). BankAmerica's percentage of originations to LMI individuals remained stable or increased in six states (Arizona, Hawaii, Nevada, New Mexico, Oregon, and Texas). However, its percentage of originations to LMI individuals approximated or exceeded the aggregate in all but Alaska and Hawaii. The most notable difference, as in the case of LMI properties, is in Texas. In 1997, BankAmerica originated 41.1% of its HMDA-reportable loans to LMI individuals in that state, compared to 24.6% for the aggregate.

Commenters have accurately noted a decline in NationsBank's HMDA volume in 1997, attributing it to NationsBank's neglect of its existing communities or to NationsBank's acquisition of banks and decreasing its

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lending efforts in the acquired areas. However, staff notes that the same pattern is evident in BankAmerica's HMDA application volume (i.e., an increase in volume in 1996 and a decline in 1997), indicating that there may be other forces at work in the economy which cannot be captured by HMDA data.

While there are areas in which NationsBank and BankAmerica might strengthen their HMDA-related lending efforts, staff recognizes that HMDA data alone do not provide a complete picture of the activities undertaken and the process involved in making the lending decision. Moreover, given the satisfactory or better CRA and Compliance records of the two organizations, staff does not find evidence to support commenters' allegations that either NationsBank or BankAmerica discriminate against minority individuals or areas, or against LMI individuals or areas.

*CRA Small Business/Small
Farm Lending Records*

Staff reviewed CRA small business and small farm data for 1996 and 1997 for both organizations in selected states of interest to commenters. For NationsBank, staff reviewed data for North Carolina, Florida, Georgia, Missouri, New Mexico, and Texas. For BankAmerica, staff reviewed data for California, New Mexico, and Texas. As in the case of HMDA data, staff combined the data for each organization's CRA data reporting subsidiaries. For charts illustrating the small business and small farm lending record of each organization, see the separate Appendix available in the Secretary's Office, the Division of Banking Supervision and Regulation, and the Division of Consumer and Community Affairs.

Small Business Lending — NationsBank's volume of small loans to businesses (i.e., loans for \$1 million or less) for 1997 ranged from 8,543

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loans in Texas to 2,449 loans in New Mexico NationsBank reported 5,501 loans in Missouri and between 3,252 and 3,585 loans in North Carolina, Florida, and Georgia BankAmerica originated 10,316 small loans to businesses in California, 1,421 in Texas, and 116 in New Mexico NationsBank's volume of loans to small businesses (i.e., loans to businesses having annual revenues of \$1 million or less) ranged between 5,645 (in Texas) to 1,111 (in New Mexico), with the other four states reporting volumes between 1,986 and 2,610 BankAmerica make 22,133 loans to small businesses in California, 3,409 to small businesses in Texas, and 325 to small businesses in New Mexico Staff notes that NationsBank's 1997 volume of small loans to businesses and loans to small businesses represented between approximately 3% to slightly more than 6% of all loans reported by lenders in the four of its markets, but in Missouri, its volume of small loans to businesses represented almost 11% of total loans reported by the aggregate, and its loans to small businesses represented almost 9% of the aggregate In New Mexico, NationsBank's 1997 volume represented more than 17% of small loans to businesses and more than 14% of loans to small businesses For BankAmerica, small loans to businesses represented more than 10% of the aggregate and loans to small businesses represented almost 18% of the loans reported by the aggregate

The small business lending data suggest that NationsBank and BankAmerica are generally performing at or above the level of the aggregate in terms of making both small loans to businesses (i.e., loans for \$1 million or less) and loans to small businesses (i.e., businesses having gross annual revenues of \$1 million or less) in LMI census tracts NationsBank lagged the aggregate somewhat both in small loans to businesses and in loans to small businesses only in Texas, but this difference was slight In that state, 25.1% of NationsBank's small loans to businesses went to businesses located in LMI tracts (compared to 27.5%

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for the aggregate) and 24.3% of its loans to small businesses went to businesses located in such tracts (compared to 25.3% for the aggregate). Similarly, BankAmerica lagged the aggregate slightly in New Mexico in both types of loans. In that state BankAmerica reported 25.2% of its loans were small loans to businesses located in LMI tracts (compared to 28.2% for the aggregate) and 24% of its loans were loans to small businesses located in such tracts (compared to 26.2% for the aggregate). NationsBank's percentage of both types of loans in LMI tracts approximated or exceeded the percentage of LMI tracts in two states, Florida and New Mexico, and BankAmerica's percentage of both types of loans exceeded the percentage of LMI tracts in California.

Small Farm Lending — The volume of small loans to farms (i.e., loans for \$500 thousand or less) and loans to small farms (i.e., farms having annual revenues of \$1 million or less) was much lower than the small business lending volume for both organizations. NationsBank's 1997 volume of small loans to farms ranged from 2,287 originations in Missouri to 25 originations in Florida. NationsBank reported 1,666 such loans in Texas, 374 in North Carolina, 314 in New Mexico, and 33 in Georgia. Its loans to small farms ranged from 1,905 in Missouri (followed by 1,257 reported in Texas) to 19 originations in Florida. NationsBank reported 290 loans in New Mexico and 29 in Georgia. NationsBank's volume of small loans to farms represented more than 13% of the aggregate in Texas, 15% of the aggregate in Missouri, and 23.6% of the aggregate in New Mexico. Similarly, its volume of loans to small farms represented almost 12% of the aggregate in Texas, 13.5% of the aggregate in Missouri, and almost 24% of the aggregate in New Mexico. BankAmerica reported 134 small loans to farms in California in 1997, four in New Mexico, and none in Texas. BankAmerica originated 71 small farm loans in California and none in

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either New Mexico or Texas

Both organizations are providing small farm loans to farms located in LMI areas, but assessing lending patterns is a bit more difficult because the volume of such lending is smaller and as yet, we have only two years' worth of data. In Florida, NationsBank originated only four small loans to farms in 1997, and in Georgia, it originated only two. These loans were also classified as loans to small farms in those states. NationsBank lagged the aggregate significantly in North Carolina or Texas in terms of the percentage both of small loans to farms and of loans to small farms in LMI areas of those states. NationsBank approximated or exceeded the aggregate in percentage of loans of both types in LMI areas in Missouri and New Mexico. Although BankAmerica originated only 134 small loans to farms and only 79 loans to small farms, the percentage of such loans in LMI areas exceeded the aggregate in both cases.

Conclusion

Staff reviewed information provided by NationsBank, supervisory information concerning each organization's CRA program, and HMDA and CRA data from the Board's own systems. Both organizations' subsidiaries have CRA programs in place and working well that are satisfactory to their respective supervisory agencies. These agencies have performed fair lending reviews in the course of their examinations of the banking subsidiaries and have found no instances of discriminatory practices or practices intended to discourage applicants from submitting applications.

The supervisory agencies routinely review branch closing policies and procedures in the course of the CRA examinations. Both organizations' branch closing policies, procedures, and records, have been found to be satisfactory to their respective supervisory agencies, and to appropriately take into account the impact and alternative measures when branches located in LMI communities are involved. Staff has reviewed the branch

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closure reporting required of NationsBank in connection with its acquisition of Boatmen's and Barnett and have found no indication that NationsBank is disproportionately impacting LMI areas when it closes its branches. The accompanying report of NationsBank's actions to mitigate the impact of such closures on LMI areas is also satisfactory.

While staff does not believe that the comments submitted should preclude approval of this application, staff nevertheless recommends that NationsBank be required to report branch closures that occur as a result of this proposal to the Federal Reserve System during the two-year period after consummation as part of its next applications to the System to acquire a depository institution. For branches closed in LMI census tracts, the merged organization should indicate the proximity to the nearest surviving branch and the steps taken to mitigate the impact of the branch closure.