Before a Joint Hearing of
The Board of Governors of the Federal Reserve System
The Federal Deposit Insurance Corporation
The Office of the Comptroller of the Currency, and
The Office of Thrift Supervision

Concerning Modernization of the Community Reinvestment Act

Chicago Federal Reserve Bank
August 12, 2010

Deputy Director Barnes, Governor Duke, Vice Chairman Gruenberg, and Deputy Comptroller Wides, thank you for this opportunity to present my remarks concerning improvements to the Community Reinvestment Act. I am Paul Bellamy, and I'm the Director of the Cuyahoga County Foreclosure Prevention Program in Cleveland, Ohio. The prevention program is part of the County Treasurer's Office and works to support, coordinate, improve and expand successful foreclosure interventions throughout Cuyahoga County. As you might expect I work closely with both Mr. Ford and Mr. Tisler on issues confronting our foreclosure devastated community.

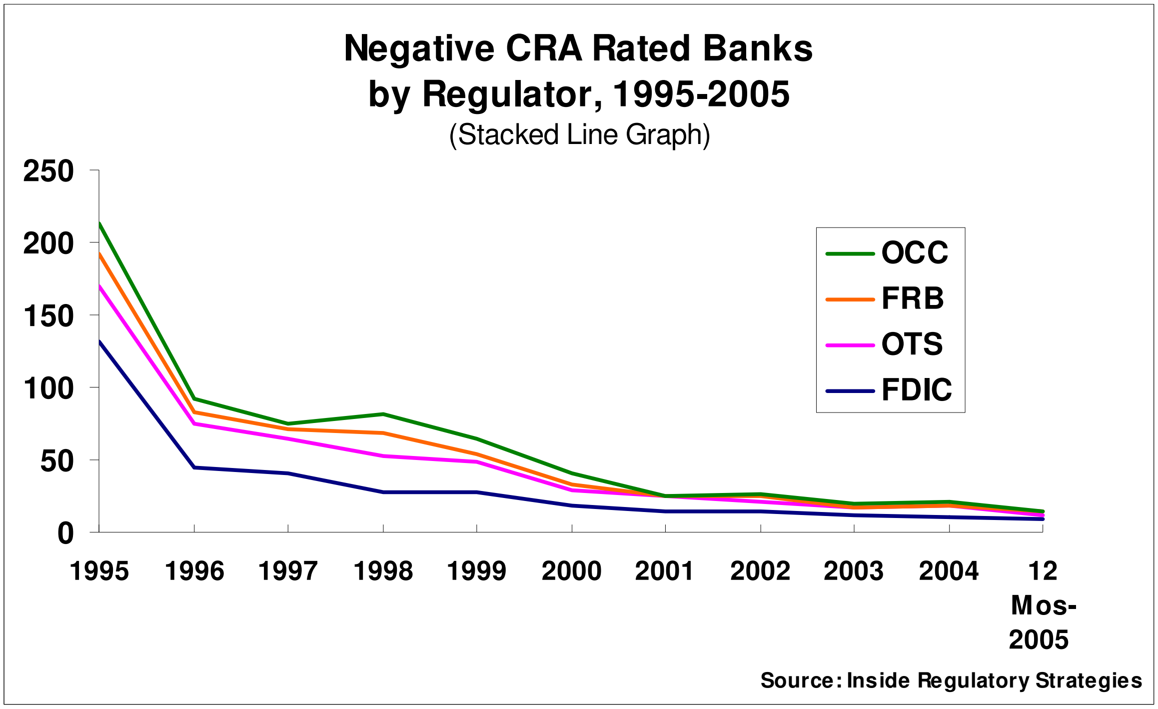
I am here not to suggest improvements to the regulatory scheme for the CRA but to raise what I consider to be the elephant in the room. It is my contention that unless there is a thorough going review of the regulatory capture of your agencies by the financial services---improvements to the CRA, however thoughtful and earnest, will come to naught.

My experience with the Community Reinvestment Act is relatively recent. I began participating in bank challenges under the Act in 1997 and was involved in the HMDA research and drafting of challenge letters on five northern Ohio bank mergers from that year until 2007. Acting with other groups and individuals we have challenged mergers and acquisitions by First Merit Bank, Fifth Third Bank, Charter One Bank, National City Bank (since collapsed and absorbed by PNC Bank) and most recently, Huntington Bank. In my exchanges with the Federal Reserve and the Office of the Comptroller of Currency throughout those challenges, I was invariably treated as a rank outsider. A barbarian at the gate, attempting to get the attention of someone, anyone, inside the regulatory fortress who knew and/or cared about the communities afflicted by the increasingly detached, fee driven, and ethically suspect, dual market mortgage industry.

CRA Grade Inflation

First the agencies need to carefully examine the well-documented phenomenon of CRA grade inflation, a key aspect of the collapse of the overall CRA enforcement mechanism. According to a mortgage trade publication, negative findings against banks, either "needs to improve" or "substantial non-compliance" nearly vanished between 1995 and 2005. These two negative ratings from CRA examinations dropped from 213 in 1995 down to only 14 in 2005.

This was not mere happenstance nor did it reflect a drastic improvement in the community-serving performance of the depositories subject to exams. Rather, beginning in 1995 bank-favoring changes were made to the CRA examination standards, there were fewer CRA examines conducted nationwide, and the new, vague and qualitative "service test" enabled flat-out gaming of the rating system by CRA examiners. This service test redemption factor surfaced from research conducted by Michael Stegman, a professor from the University of North Carolina. Reviewing over 2,000 CRA examinations between 1996 and 2001 Stegman found that by relying on the highly subjective service test, regulators could repair a bank's lower scores on the more concrete and quantitative lending and investment tests. By raising the service test score the examiner could thereby assure that the faltering bank got at least a "satisfactory" overall rating instead of the dreaded, but probably deserved, "needs to improve" rating.



Stegman found that the math worked like this: a low lending test score, plus a low investment test score could be shored up by a "high satisfactory" service test score and *viola*, the under-performing bank just barely got the points needed to earn a satisfactory overall rating. This unexpected combination of low and high scores confirmed that CRA examiners were jigging the system to protect banks from their own poor performance under CRA standards. And these inflated CRA scores made it easier for banks to survive CRA challenges from community groups.

CRA Merger Challenges A Case Study: National City and Provident Bank

Attached to this testimony are two documents related to a 2004 CRA challenge to National City Bank's acquisition of Ohio's only subprime lending depository, Provident Bank. The first document "Objections to NCB Acquisition of Provident Bank," was filed with the Cleveland Federal Reserve (National City's holding company was involved) to raise National City's increasing involvement with subprime lending as an issue for broader CRA consideration. National City was a prime example of the by then established and troubling trend for depositories to insinuate themselves into the subprime lending market. In the case of National City, this was done by purchasing First Franklin Financial. Soon enough the lower lending standards of First Franklin's line of business were creating consistently higher profits for National City. Or as National City's 2003 Annual Report boasted, "Nonconforming loan retention powers balance sheet enrichment program." As the annual report went on to explain, National City was holding a portion of First Franklin's loans in its portfolio and reaping the returns from First Franklin's boosted interest rate margins.

We challenged this merger because we thought that National City's acquisition of Provident presented an excellent opportunity to shine a light on the disturbing trend of increasing bank involvement with subprime lending. First Franklin reported separately under HMDA from the "regular" National City mortgage units, and could be clearly contrasted against the bank's conforming loan market profile.

The most disturbing feature contrasted by the HMDA data was the race distinctions between National City's conforming loan demographics and First Franklin's customer profile. It was abundantly clear that First Franklin products were being more heavily marketed in minority areas than the less expensive, better-underwritten conforming loans National City offered. What the HMDA data also proved was that this was more than just a function of increased credit issues in the minority communities. Rather, First Franklin was taking a higher percentage of loan applications in the minority census tracts than the NCB prime lending mortgage subsidiaries. First Franklin loans were getting dumped into minority areas *in lieu of* the bank's less expensive, higher quality conforming loan products. It was back to "two water fountains," with two different types of water and a borrower's odds of getting shuffled to one fountain rather than another, was increasingly determined by their race.

After some months of back and forth with National City's lawyers and the Cleveland Fed serving as intermediary, the Board released its decision approving the merger. That is the second document attached to this testimony, "Order Approving the Acquisition of a Bank Holding Company." This decision skirted the fundamentally important issues raised National City's bifurcated lending structure and, as was the rule, the Order approving the merger proceeded to:

- split hairs;
- insist that troublesome conduct wasn't necessarily "illegal" conduct;
- dis-aggregate geographies to lower National City's peer "aggregate lender" benchmarks;
- compare National City's conforming market performance with other conforming market depository lenders---without any discussion of what those peer standards actually were;
- summarily dismiss the proffered, compelling HMDA data with the ubiquitous regulatory boilerplate HMDA-isn't-really-good-enough language;[1] and finally,
- assiduously avoid discussing the differences between First Franklin's subprime mortgages and NCB's conforming loan products and their suspiciously distinct distribution channels.

None of this equivocating on behalf of National City and its new and exhilarating subprime venture was a surprise, although the vigor and enthusiasm the Fed brought to the effort was remarkable. It was simply more of what we knew all too well from years of shouting, jumping up and down, and waving our arms at the gate. The regulatory fortress was run by and for the banking industry, and as for the communities suffering from the virulent subprime plague? They found themselves lying outside the walls as well.

It was another two years before the wheels began to fall off National City's heady venture into subprime lending. Ultimately, the bank's commitment to First Franklin proved to be the beginning of its end. Subprime tainted NCB's reputation, undermined its credibility, and finally, along with other instances of mismanagement and bad timing, destroyed one of Cleveland's oldest and strongest institutions and one of its largest employers.

In short, subprime's cancerous taint didn't stop at neighborhoods' boundaries, it worked its way through the entire economic fabric of the city.

Two Mortgage Markets and the Abandonment of the CRA

Finally, I want to submit three maps of Cuyahoga County for the panel's consideration. In the fall of 2006 I was asked to put together a short piece for inclusion in the handout materials for an annual, local fair lending conference. These maps starkly portray what became of the CRA under the rampant regulatory neglect of the early and mid-Aughts.

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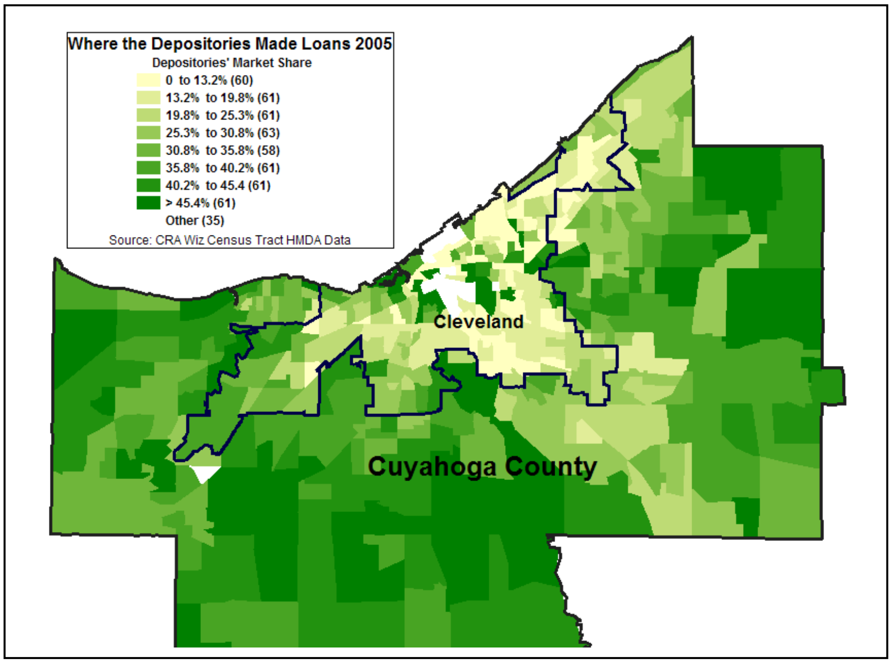
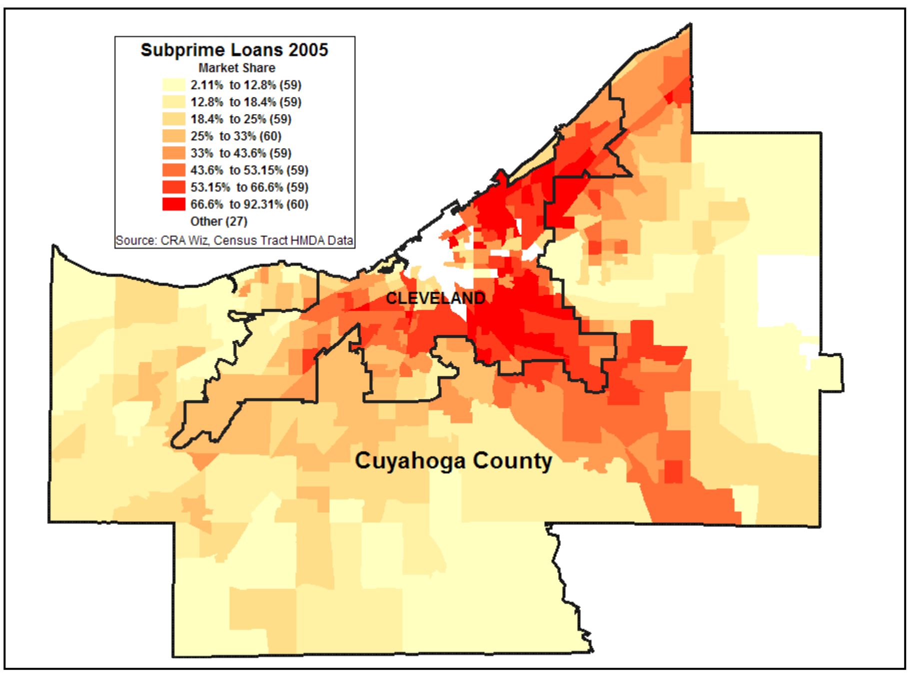
[1] "The Board recognizes that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans." At pg. 12.



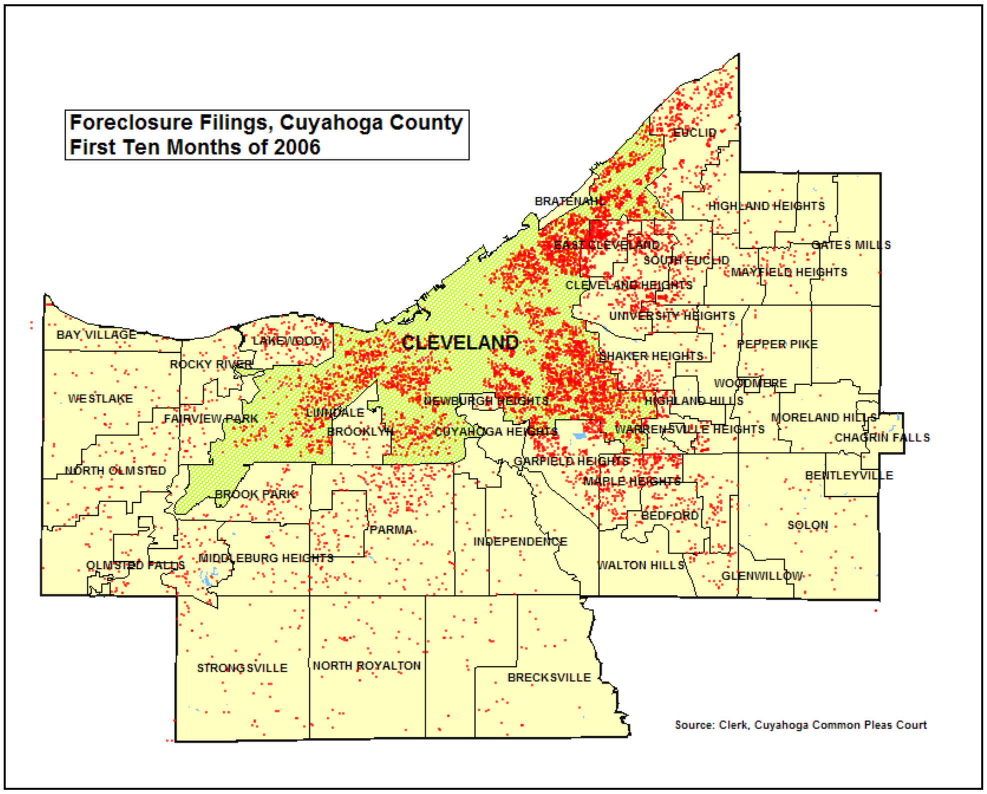
Here is the state of depository mortgage lending in Cleveland and Cuyahoga County in 2005. Aggregating the loans of the county's largest local depositories[2] and then calculating the market share of that group down to the census tract level, the abandonment of the City of Cleveland, especially its lower income and minority neighborhoods, is starkly and irrefutably evident.



But not to worry, back in 2005, high cost subprime lending rushed into the bank lending voids "to help meet the credit needs of the local communities in which" the local depositories were not doing lending. Turning the CRA on its head, regulators accepted subprime loans as an adequate substitute for the better-underwritten, less expensive conforming loans from local banks. Banks now had a get-out-the-city-free card, a pass to move on out to the suburbs, where they were

[2] For inclusion in the group, the depository needed to control at least .5% of the county's entire mortgage lending market (all loan types).

always naturally inclined to be. (If only poor HMDA knew just how unhelpful, distracting, misleading and unfair it can be!)



And finally, the bitter vintage of the grapes of wrath, geo-coded foreclosure filings in Cuyahoga County for the first ten months of 2006. The total foreclosure filings for 2006 reached 13,943; for 2007 -14,946; for 2008 -13,858; and for 2009 -14,171. We expect 2010 filings to top 2009 and continue working in earnest in the now "contagioned," recession-afflicted suburban communities.

For the record, in 1995, before the wholesale abandonment of CRA enforcement, there were only 3,345 foreclosures filed in Cuyahoga County.

If the CRA Isn't Enforced by Regulators on Behalf of the Communities It Was Intended To Protect --- It Won't Matter How You Tune It Up

My remarks have degenerated into a scold. So be it. I am from Cleveland, Ohio. We know abandonment, in all its forms. The failed financial industry and regulatory system abandoned us, and owe us, at least, the catharsis of good scold.

It's time to clear the air and squarely face the regulatory failures that have brought our nation to the brink of economic collapse. Wholesale, mindless acceptance of free-marketeering ideology has been our ruination. Regulators need to regulate on behalf of the nation as a whole, not on behalf of the industry they have been entrusted to control in the public interest.

Thank you for this opportunity to testify on the modernization of the Community Reinvestment Act.

Objections to NCB Acquisition of Provident Bank

These objections are primarily based upon the record of National City Bank and Provident Bank to engage in, and, in the case of National City---the purchasing Bank---to increasingly focus and rely upon destructive subprime mortgage lending as conducted through its wholly-owned subsidiary, First Franklin Financial Corp. Subprime lending is harmful to the disinvested neighborhoods where it is increasingly substituted as an inferior, higher-priced substitute for responsible "conforming" mortgage lending. Subprime lending---as it is currently conducted---is objectionable for the following reasons:

- It is far too often over priced for the borrower's actual risk and heavily marketed to unsophisticated A and A- credit borrowers who have earned and deserve a lower priced "conforming" loan product
- It is ***economically*** targeted to the most vulnerable communities where its additional broker-imposed costs and boosted interest rates do the most harm
- It is ***racially*** targeted as a lower quality, price-gouging substitute for responsible, prime loan products. This is the "two water fountains" or "Jim Crow" aspect of subprime, and is morally reprehensible as well as economically unfair and destructive.
- It is primarily responsible for soaring foreclosure rates in targeted minority, lower income, and aging, middle-income neighborhoods.

Notwithstanding these endemic and persistent structural problems with broker-driven subprime lending, National City has commenced upon, and with this purchase of Provident Bank (the largest subprime lending depository in Ohio) continues to build and expand its broker-driven subprime platform and subprime portfolio.

Following upon earlier efforts to enter the subprime mortgage business[1] in the late 1990s, National City purchased First Franklin Financial Companies Inc. of San Jose California, a wholesale originator of nonconforming residential mortgage loans for $266 million, in 1999. Now a wholly owned subsidiary of National City Corporation, First Franklin employs approximately 2,000 people and originated $20.14 billion in "non-prime" mortgages in 2003. First Franklin is still headquartered in San Jose, California and maintains 33 sales branches[2] throughout the country. In addition to its loan centers, First Franklin works with 23,000 mortgage brokers from around the country. According to NCC annual reports, First Franklin is a broker-driven originator,[3] and therefore can lend throughout the United States, except for Alaska, Hawaii, and Mississippi.

First Franklin offers three main product types "Direct Access," "Direct Access Dividends," and "Direct Access100% Financing".[4] First Franklin's web site also describes their product "Niches" and the basic underwriting requirements for each niche.[5] Although First Franklin offers a refinance product, unlike the majority of the subprime lenders, they also offer and originate a home purchase line of products. In fact, in 2002, within five states of National City's six state footprint (Illinois, Indiana, Michigan, Ohio, Kentucky) 59% of First Franklin's originations were home purchase loans.

National City describes the First Franklin line of business in its most recent (2003) annual report as follows:

> Residential real estate loans originated by First Franklin are generally not readily saleable in the secondary market to the GSEs for inclusion in mortgage-backed securities due to the credit characteristics of the borrower, the underlying documentation, the loan-to-value or the size of the loan, among other factors. Mortgage loans originated by First Franklin are typically readily saleable to other secondary market investors, and the Corporation generally sells between 40% and 50% of the origination volume to third-party investors, servicing released. During the past three years, $10.2 billion, $5.5 billion, and $3.8 billion, respectively, of First Franklin originated loans were retained in portfolio the Corporation. The retention of these mortgage loans was a primary driver of the increases in the

> residential real estate portfolio in 2003 and 2002. At December 31,2003 and 2002, the First Franklin residential real estate portfolio totaled $15.1 billion and $9.4 billion, respectively. First Franklin offers a variety of loan programs and documentation levels for borrowers. First Franklin uses third-party credit scores that are incorporated into the lending guidelines along with loan amount, loan-to value, and loan purpose. These loans are originated principally through wholesale channels, including a national network of brokers and mortgage bankers. No single source represents more than 1% of total production. Loan production is primarily located on the West Coast (59% of volume, of which 45% is California); however, expansion continues in the Midwest (20%) and East Coast (21%) markets. Written agreements in place with all brokers that require them to be knowledgeable of all consumer protection laws regulations, and brokers are actively monitored for compliance.[6]

It is important to note that National City does not consider the First Franklin business---or at least the First Franklin loans it retains in its own portfolio---to be very high risk: "The majority of these loans would not be considered "subprime" as that term is commonly used in the industry."[7] While the underwriting matrix contained in its "Niche" document clearly includes provision for loans to borrowers with relatively high credit scores, numerous of the First Franklin products are available to borrowers with credit scores as low as 540 and 560.

Finally, while the web site does not specifically discuss the pricing of its products, it is clear that First Franklin loans are more expensive to borrowers than conforming loans, and produce handsome returns for the National City real estate portfolio. In fact, National City has been holding approximately half of the First Franklin loans in its mortgage portfolio precisely because the higher interest rates carried by First Franklin borrowers (coupled with their relatively low risk) produce better returns than the "low yield" conforming loans that National City originates for sale in the GSE secondary market. As the 2001 National City Annual Report boasted to investors: "**Nonconforming mortgage loan retention powers the balance sheet enrichment program**." The following text explains the mechanics of National City's "balance sheet enrichment program", to boost interest income:

> Strategies for improving net interest income have been a prominent initiative for National City. In 2000, the Corporation sold lower yielding investment securities conventional mortgages, and student loans, replacing them with higher yielding nonconforming mortgage loans generated by its First Franklin subsidiary. Exceptional results were tallied in 2001 as national City Corporation reaped the benefits of retaining $3.8 billion or 60 percent of the mortgage loans generated by First Franklin. This strategy initially reduces net income by foregoing gains that otherwise would have been realized by selling these loans into the market, but the subsequent improvement in the interest income over the life of the loan more than recoups this foregone gain.[8]

Having discovered the benefits of charging higher rates to relatively low risk borrowers, National City has been increasing the number of First Franklin loans it portfolios every year since it began holding the product in 2000. At the end of 2003, National City held over $15 billion of First Franklin loans in its portfolio.

The clear trend over the last two years has been for National City to grow its First Franklin line of business at a faster rate than its conforming loan business conducted through its National City Mortgage Company subsidiary.[9]

In $ Billions	**2000**	**2001**	**2002**	**2003**
NCMC Prime Originations	20.7	56	78.9	103
First Franklin Originations	4.5	6.3	10.7	20.1
First Franklin Portfolioed	2.5	3.8	5.5	10.2

Table 1

*National City Mortgage Corporation originates loans for resale, not for the bank portfolio

The mortgage banking trends within National City's National Consumer Finance Unit are quite ominous. As every National City Corporation annual report since 2000 has made abundantly clear, the bank has developed an appetite for the cherry-picked, high yield First Franklin loans that it is retaining for its own portfolio. Keeping in mind that low and lowering interest rates have supported unheard of refinance mortgage lending volumes since the late Nineties, it is still possible to discern a growth trend within National City's mortgage business that favors subprime lending over conforming originations.

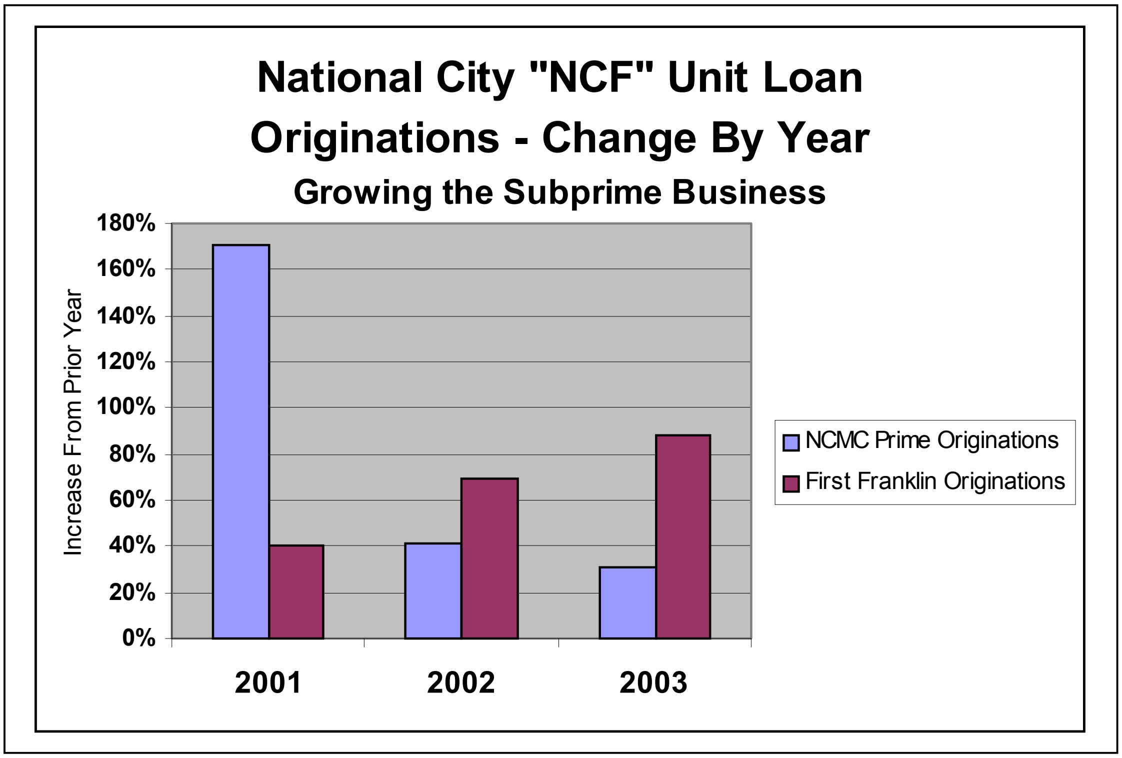


Figure 1

While the conforming loan levels still far exceed the nonconforming volumes generated by First Franklin, the year to year growth trend is much stronger for the First Franklin subsidiary than for the conforming National City Mortgage Company.

It is against this background that we submit our objections to National City's pending purchase of Provident Bank.

Subprime loans are over priced for the borrowers' actual risk and heavily marketed to unsophisticated A and A- credit borrowers who have earned and deserve a lower priced "conforming" loan product.

One of the most objectionable features of the subprime lending industry is that it has aggressively marketed subprime loans to people who qualify for conforming products. This persistent, wealth-draining dynamic has been well understood for years in the secondary mortgage market for many years. In a interview with Washington Post in the spring of 2001, Franklin Raines, Chairman and CEO of Fannie Mae, stated that he believed that up to 50% of all subprime loans were being sold to borrowers who would have qualified for A or A- priced mortgage products. Freddie Mac examined 15,000 subprime loans originated by four lenders in 1996, and concluded that between 10 and 35 percent of the subprime borrowers could have qualified for conventional loans. Moreover those same borrowers overpaid on their subprime loans between 1% to 2.5% and that doesn't even consider the higher originating fees incident to subprime loans. Another study published in 2000 surveyed industry data and noted that 29% of the subprime loans were originated to borrowers with credit scores over 640, conforming loan credit score quality.

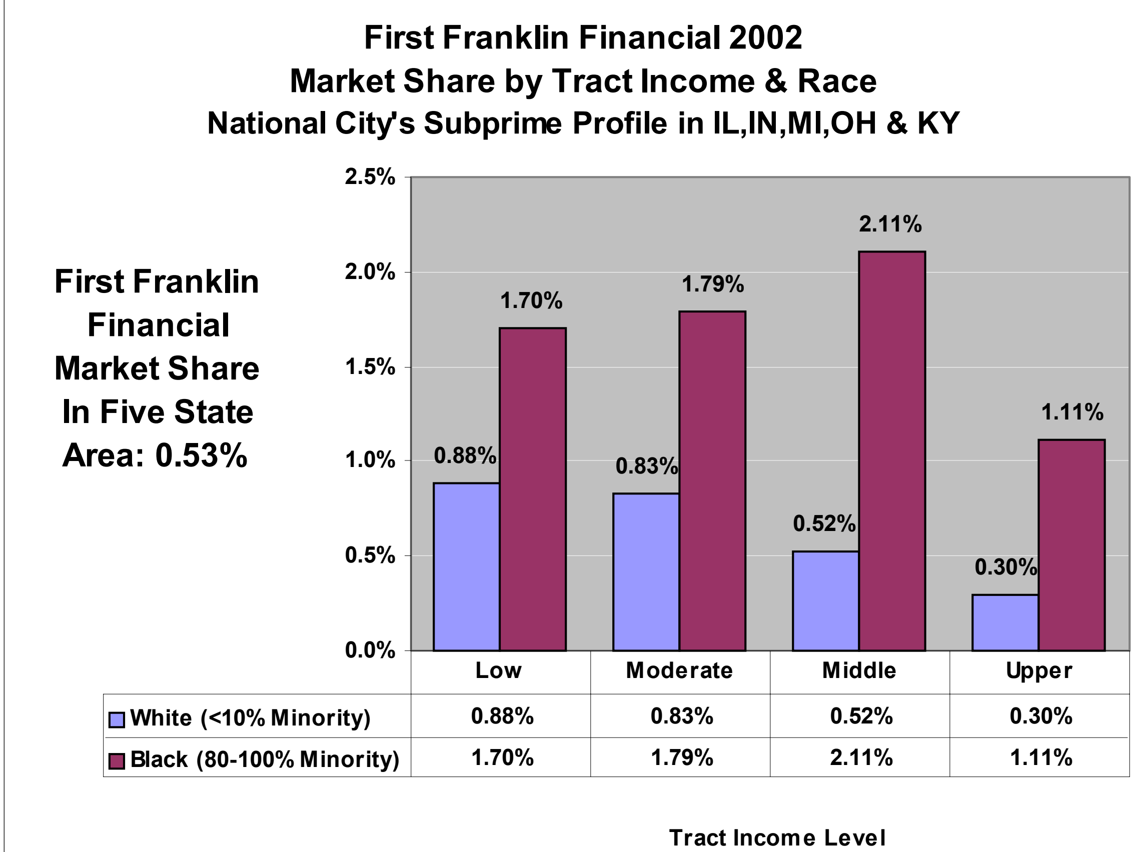
In the case of National City, it is clear that the Bank is very comfortable keeping half of the First Franklin loans in its own portfolio. Obviously, this practice raises issues for investors in the bank about risk, but National City claims that First Franklin loans are not really "subprime". (See above.) However, the more likely explanation for the Bank's comfort with these loans is that they are "cherry-picked" and, in fact, represent very low risk coupled with very high interest rate returns. Stated another way, it appears that the bank portfolioed First Franklin product is classically overpriced, low risk subprime loans. (See the "balance sheet enrichment program," discussed above.) How many of the borrowers in the National City portfolio qualified for conforming products, but got stuck with First Franklin? Would National City be willing to allow an independent audit of their portfolioed loans to see whether their pricing is fair and calculated to cover actual risk, or exploitative, as is so often the case in the rest of the industry?

Subprime loans are *economically* targeted to the most vulnerable communities where its additional broker-imposed costs and "boosted" interest rates do the most harm.

It is clear that ***in theory*** subprime lending offered tremendous promise to lower income comminutes that were to marginal to qualify for conforming loans. As the subprime industry grew, it was captured by the secondary private securitization market that demanded more of the high priced loans to earn fees and to sell to eager investors hungry for the extremely high returns that securtized subprime MBSs offered. Market share was king and the industry turned to proactive independent contractor brokers to move product. De-coupling the profits of originating subprime from holding and servicing subprime product, rewarded marginal broker-operators for volume, not quality, and created a broker compensation system that set up tremendous subprime delinquency and foreclosure rates.

As is true of the rest of the industry, First Franklin's originations are broker driven, and perpetuate the disconnect between origination volume and underwriting quality. For those loans that are of a lower quality, National City has the option to sell the loans, service rights released, to the secondary market. But the damage is done to the defaulting family and neighborhood, notwithstanding the money being made by the brokers, First Franklin and National City.

National City has claimed that it doesn't participate in predatory lending and that it closely monitors their brokers. We would like to see the bank prove that their efforts actually solve the endemic problems discussed above by revealing how many of the First Franklin loans end up in foreclosure.



	Low	Moderate	Middle	Upper
White (<10% Minority)	0.88%	0.83%	0.52%	0.30%
Black (80-100% Minority)	1.70%	1.79%	2.11%	1.11%

Figure 2

Looking at origination data for First Franklin from five states of National City's six state "footprint," confirms that the overall First Franklin market share for all MSA areas in the region is just over one half of one percent of the HMDA reportable loans in 2002 (.53%). However, in the white (less than 10% minority population census tracts) low and moderate-income census tracts, First Franklin holds a much higher market share .88% and .83% respectively. This increased share in the lower income areas is intuitively consistent with the idea that subprime loans are intended to serve those with credit problems and credit problems would be greater in lower income areas. In the white areas with middle and upper income levels, the market share drops off below the regional share to 52% and 30% respectively.

However, these intuitively consistent patterns break down altogether in the region's census tracts where minority populations fall into the 80-100% levels. Which raises the next problem issue with subprime lending as an industry and with National City Bank.

Subprime lending is *racially* targeted as a lower quality, price-gouging substitute for responsible, conforming loan products. This is the "two water fountains" or "Jim Crow" aspect of subprime, and is morally reprehensible as well as economically unfair and destructive.

National City has repeatedly claimed that they do not engage in predatory lending and that their lending meets all the legal requirements of the Fair Housing Act. However, the First Franklin HMDA data suggests that minorities are being steered into the First Franklin products even while the Bank's conforming loan products are being withheld from those very same minority populations.

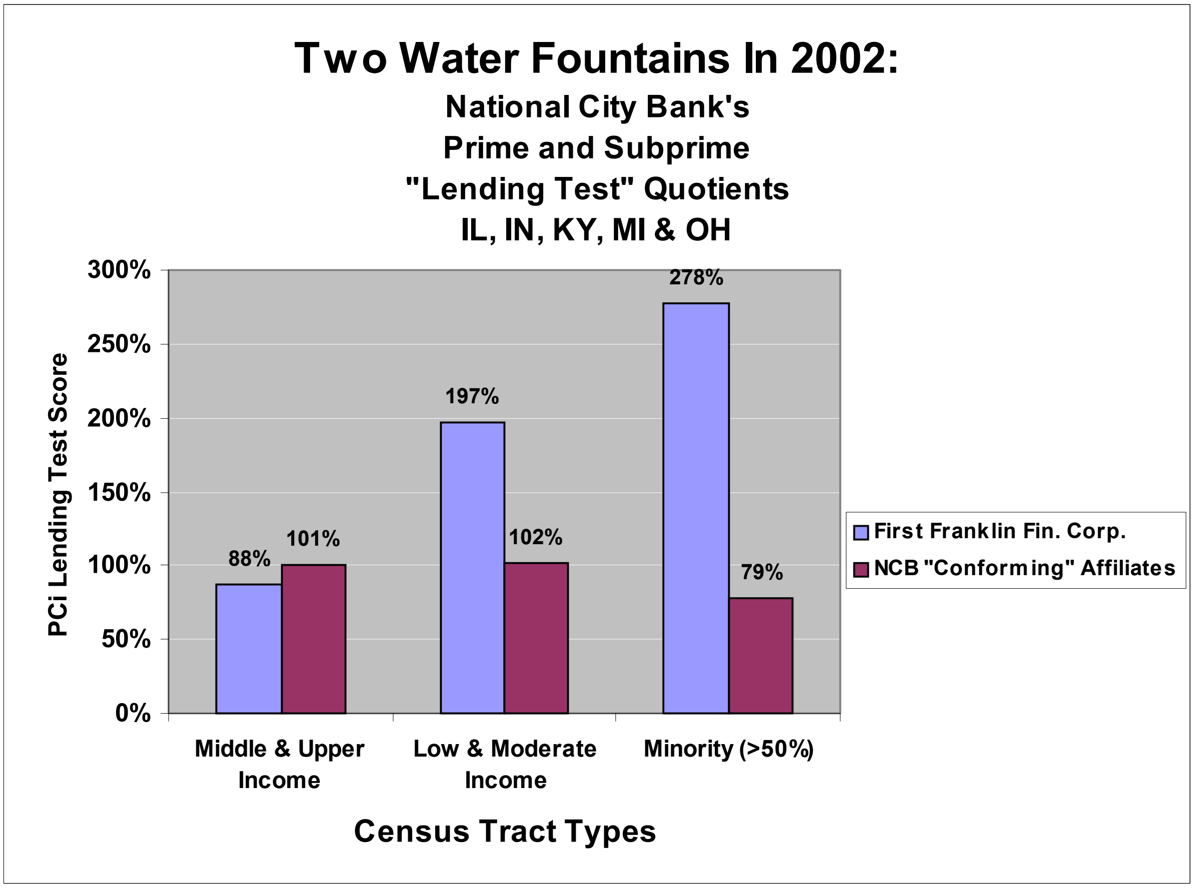


Figure 3

Here again, as in Figure 2, race seems to confirm market share "anomalies" with National City's subprime mortgage product. In Figure 3, as in Figure 2, there is a clear disparity between lower income and upper income areas in terms of market share. Here the blue bars indicate First Franklin's relative market share and the red bars represent National City's prime affiliates.[10] The analysis here compares overall market share with market shares within limited geographically-defined market segments. A score of 100% indicates that a lender is writing exactly the same market share in the sub-geography as in the larger region. Less than 100% represents that there is a reduction in market share (under-performance) while a score over 100% indicates a higher market share than in the larger region (over-performance).

Here it is clear that First Franklin is extraordinaril out performing in the minority areas while the prime lending affiliates are seriously under-performing in those very same areas.

One argument put forward by subprime lenders who have been confronted by this persistent pattern in their lending, plead that residents in minority areas suffer more credit problems. Therefore, the increase in originated subprime loans in minority neighborhoods is simply a reflection of that historically determined pattern of disinvestment and disconnection from mainstream financial institutions, and their conforming credit products.

However, it is clear from the HMDA data that these racially defined lending patterns don't "just happen." They are the result of racially focused marketing efforts and proactive broker saturation in minority areas.

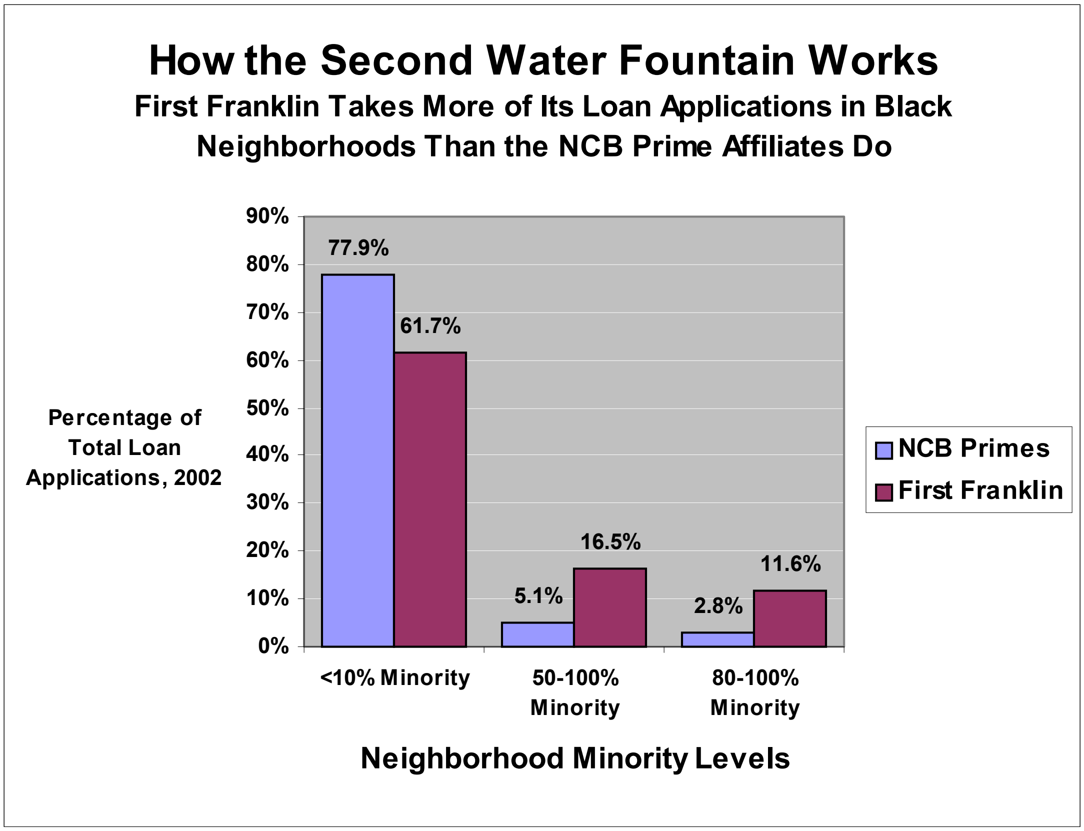


Figure 4

Comparing the percentage of loan applications[11] taken by First Franklin brokers with the percent taken by the prime lending affiliates, it becomes abundantly clear that First Franklin works the minority areas for business and the prime lending affiliates don't. Thus, in the white areas (less than 10% minority) the prime affiliates take nearly 80% of their applications, while First Franklin only takes about 60%. However, the more a census tract begins to reflect minority residents the more First Franklin applications are taken while the NCB prime lenders nearly disappear. These racial lending patterns are the result of intentional sustained and racially focused marketing.

Subprime lending is primarily responsible for soaring foreclosure rates in targeted minority, lower income, and aging, middle-income neighborhoods.

There is a growing consensus among researchers and policy analysts that subprime lending is primarily responsible for the appalling toll that foreclosures are taking in our lower income and minority neighborhoods.

A recently released study by the Woodstock Institute in Chicago is just the latest of a long and very consistent line of research confirming the foreclosure-subprime connection. The researchers at Woodstock looked at foreclosures in the Chicago area and found the following statistical correlation between subprime loans and foreclosures:

For every 100 additional subprime loans on owner –occupied properties made in a typical neighborhood from 1996 to 2001, there were additional 9 foreclosure starts in the community in 2002 alone. Nine foreclosure starts in a census tract in a year is a substantial increase. The average tract in the Chicago area had only about 11 foreclosure starts in 2002. Thus, this represents an increase of 76 percent in the foreclosure level.[12]

In Ohio, the foreclosure increase has reached crisis proportions.

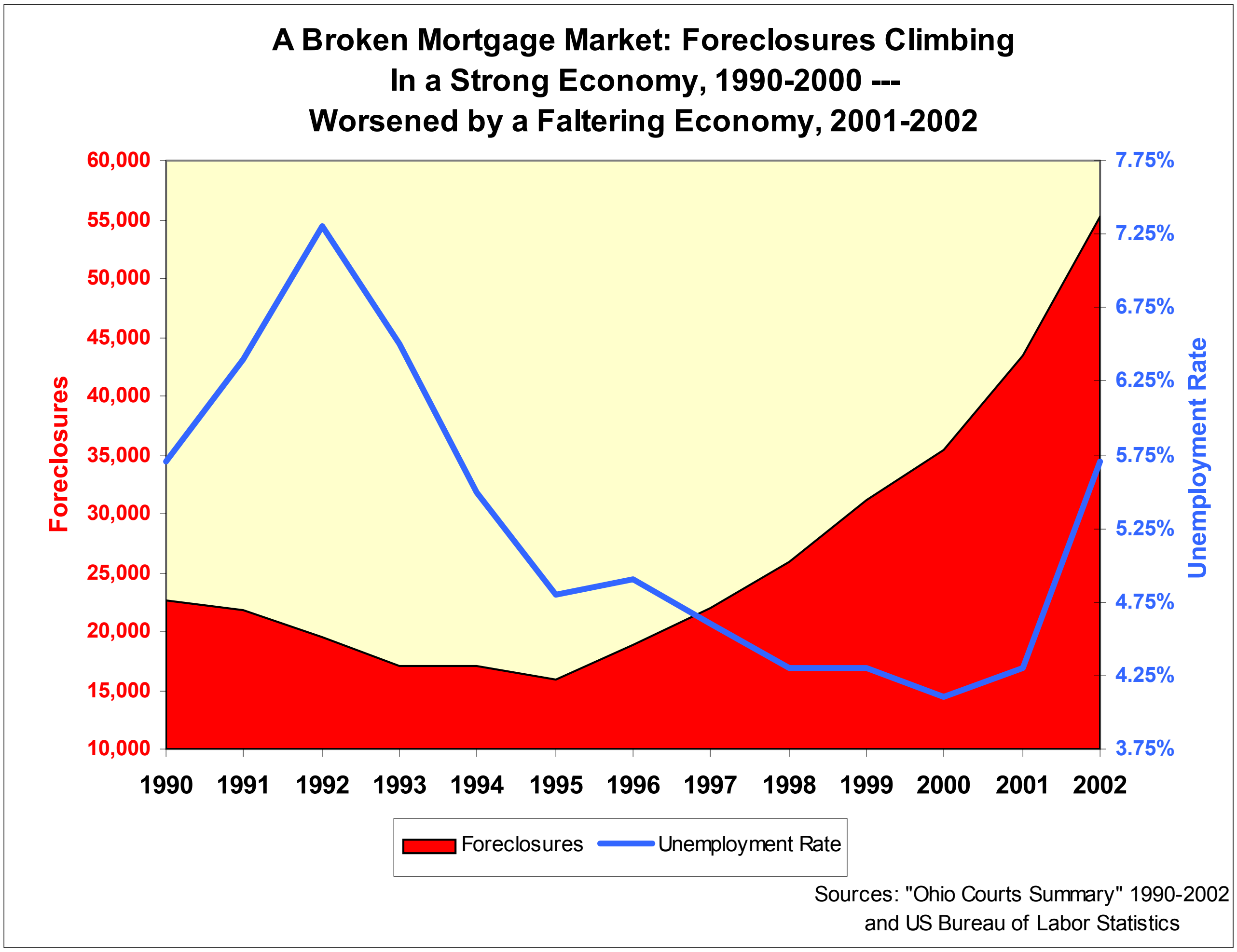


Figure 5

In fact, the extraordinary effect of subprime foreclosures on the industry has forced the Mortgage Bankers Association of America to reconfigure its national foreclosure data pool to take into consideration the real incidence of foreclosures in "conventional," i.e. non-governmental, loan pools. (See the MBAA website for the 2003, 4th quarter delinquency and foreclosure data release.

To the extent that National City has chosen to cash in on the subprime business, it is contributing to these destructive and multiplying household failures that have now reached epidemic proportions across the nation.

In summary, the objection to this acquisition is best put as a rhetorical question: Why should National City Bank be allowed to purchase Provident Bank, given this newly acquired and growing appetite for the growing scourge of subprime lending?

Notes

[1] In 2000 National City closed its 69 "Loan Zone" retail stores and shut down the originating business of Altegra Credit Company, presumably because of problems with the Altegra loans that surfaced in its portfolio in 2001. NCC 2001 Annual Report, pgs. 38-39 and NCC 2002 Annual Report, pg. 26.
[2] First Franklin has branch offices in Arizona, California, Colorado, Florida, Georgia, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New jersey, New York, North Carolina, Ohio, Oregon, Tennessee, Texas, Utah, and Washington.
[3] NCC 2003 Annual Report, pg. 18.
[4] See Attachment.
[5] See Attachment.
[6] NCC2003 Annual Report, pg. 18.
[7] NCC 2002 Annual report, pg. 21. See also the NCC 2000 Annual Report, where the First Franklin loans are referred to as being "typically in the higher credit tier of nonprime mortgages," pg. 4.
[8] NCC 2002 Annual report, pg. 3.
[9] "In the second half of 2002 National City combined its conventional and nonconforming mortgage and national home equity lending groups into a new business line designated as National Consumer Finance. In addition, in footprint dealer finance credit card and student lending activities formerly housed in the consumer finance business line were combined with the retail and small business banking to form a new line of business designated as Consumer and Small Business Financial Services. National City is now functionally managed along the following five business lines: Consumer and Small Business Financial Services; Wholesale Banking, National Consumer Finance, Asset Management and National Processing." NCC 2002 Annual Report, pg. 19.

First Franklin is included in the National Consumer Finance section along with National City Mortgage Corporation. Home equity loans are generated through the CSBFS branch network and nationally through the CFS subsidiary National City Mortgage Corporation. In 2002, 55% of the banks conforming loans were generated through wholesale and correspondent channels, while 45% of the conventional loans were generated through NCMC branches nationally or through CSBFS branches in National City's six-state "foot print. " NCC 2003 Annual Report.
[10] The "PCi Lending Test" is a HMDA data report format developed by the PCi Corporation as part of its CRA Wiz® proprietary lending software. This analysis uses the CRA *Wiz* "Peer HMDA Data" provided by PCi Services. The HMDA reporting and analyzing module of the *Wiz* program provides a report format that looks at any HMDA reporting lender's performance for geographic sub-segments within a larger market area. For this report we used the 2002 HMDA data for all loan types originated in the five-state area of Illinois, Indiana, Michigan, Ohio, and Kentucky. In essence, the report measures what a lender's market share is in the entire market geography and then predicts (all else being equal} what that lender's performance ought to be in a more limited geography assuming the same market penetration in the limited geography. The graph uses the market share disparities to compare the "prime lending" National City affiliates vs. the "subprime lending" First Franklin Financial Corp. in the low and moderate-income census tracts, the middle and upper income census tracts and in the >50% minority census tracts in the five state area. A score of "100" would mean that a lender is doing the exact volume of originations in the market sub-segment that would match its total market area performance. A score below 100 and the performance is lagging; higher than 100 and the performance in the sub-geography is outpacing its participation in the larger market.
[11] Loan applications taken in IL, IN, MI, OH and KY.
[12] Risky Business—An Econometric Analysis of the Relationship Between Subprime Lending and Neighborhoods Foreclosures, Immergluck and Smith, March 2004, Executive Summary.

FEDERAL RESERVE SYSTEM

National City Corporation
Cleveland, Ohio

Order Approving the Acquisition of a Bank Holding Company

National City Corporation ("National City"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire Provident Financial Group, Inc. ("Provident") and its subsidiary bank, The Provident Bank ("Provident Bank"), both in Cincinnati, Ohio. National City also has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. §§ 1843(c)(8) and 1843(j)) and section 225.28(b)(6) of the Board's Regulation Y (12 C.F.R. 225.28(b)(6)) to acquire a nonbanking subsidiary of Provident and thereby engage in permissible investment advisory activities.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 Federal Register 8,660 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

National City, with total consolidated assets of $116.4 billion, is the 11th largest depository organization in the United States, controlling deposits of $75.2 billion, which represents approximately 1.3 percent of total deposits in insured depository institutions in the United States.[1] National City is the third largest insured depository organization in Ohio, controlling deposits of $23.7 billion, which represents approximately 11.2 percent of total deposits in

[1] Asset, nationwide deposit, and ranking data are as of December 31, 2003, and statewide deposit and ranking data are as of June 30, 2003.

insured depository institutions in the state ("state deposits"). National City also operates subsidiary insured depository institutions in Illinois, Indiana, Kentucky, Michigan, Missouri, and Pennsylvania.

Provident, with total consolidated assets of approximately $17.1 billion, is the seventh largest insured depository organization in Ohio, controlling deposits of $10.3 billion, which represents approximately 4.9 percent of state deposits. Provident Bank operates branches in Ohio and Kentucky.

On consummation of this proposal, National City would become the tenth largest insured depository organization in the United States, with total consolidated assets of $133.5 billion, and would control approximately 1.4 percent of total deposits in insured depository institutions in the United States.[2] National City would become the largest insured depository organization in Ohio, controlling deposits of approximately $34 billion, which represents approximately 16.1 percent of state deposits.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.[3] For purposes of the BHC Act, the home state of National City is Ohio,

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[2] All data include National City after consummation of the proposal to acquire Allegiant Bancorp, Inc., St. Louis, Missouri ("Allegiant"). The Allegiant proposal was approved by the Board on March 15, 2004. See National City Corporation, 90 Federal Reserve Bulletin 236 (2004) ("National City/Allegiant Order").

[3] A bank holding company's home state is that state in which the total deposits of all banking subsidiaries of such company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C).

and Provident is located in Kentucky and Ohio.[4] Based on a review of all the facts of record, including relevant state statutes, the Board finds that all the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[5] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

National City and Provident compete directly in the Cleveland,

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[4] For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch.

[5] See 12 U.S.C. §§ 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). National City is adequately capitalized and adequately managed, as defined by applicable law. In addition, on consummation of the proposal, National City would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 15 percent of the total deposits of insured depository institutions in Kentucky, the only applicable state limitation on the amount of deposits a bank holding company can acquire in this transaction. See Ky. Rev. Stat. Ann. § 287.900 (Supp. 2003).

[6] 12 U.S.C. § 1842(c)(1).

Columbus, Dayton, and Springfield banking markets, all in Ohio.[7] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by National City and Provident,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the markets.

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[7] These banking markets are described in Appendix A.

[8] Market share data are as of June 30, 2003, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Board 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

[9] Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered moderately concentrated if the post-merger HHI is between 1000 and 1800 and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial institutions.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets.[10] After consummation of the proposal, the Dayton banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in the market. Although the Cleveland, Columbus, and Springfield banking markets would remain highly concentrated, the change in market shares would be small and numerous competitors would remain in the markets.

The Department of Justice also has conducted a detailed review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in the Cleveland, Columbus, Dayton, or Springfield banking markets or in any other relevant banking market.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including reports of examination, other confidential supervisory information received from the primary federal banking agency that supervises each institution, information provided by National City, and public comment on the proposal.

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[10] The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

National City is well capitalized and will remain so on consummation of the proposal.[11] In addition, the Board has consulted with the Office of the Comptroller of the Currency ("OCC"), the primary federal supervisor of National City's lead banks, about the proposal.[12] The Board also has considered the managerial resources and the examination records of National City and Provident and the subsidiary depository institution to be acquired, including its risk management systems and other policies.[13] Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of National City, Provident, and Provident Bank are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant

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[11] A commenter alleged that the compensation under severance agreements for Provident's senior management is excessive. The Board notes that the severance agreements have been disclosed to shareholders and that National City will remain well capitalized on consummation of the proposal.

[12] A commenter also expressed concern that Provident restated its earnings for the years 1997 through 2002. The Board monitored the restatement by Provident and has consulted with the Securities and Exchange Commission regarding this matter.

[13] One commenter criticized National City for lobbying against state and local efforts to enact and enforce anti-predatory lending laws and ordinances. Two commenters expressed concern that the proposal might result in a loss of jobs. The Board notes that the commenters do not allege and have provided no evidence that National City engaged in any illegal activity or other action that has affected, or may reasonably be expected to affect, the safety and soundness of the institutions involved in this proposal or other factors that the Board must consider under the BHC Act.

insured depository institutions under the Community Reinvestment Act ("CRA").[14] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of National City and Provident in light of all the facts of record, including public comment on the proposal. The Board recently considered the convenience and needs factor in National City's proposal to acquire Allegiant. In that proposal, the Board conducted a detailed review of the CRA performance records of the insured depository institutions controlled by National City, the lending records of all the National City bank and nonbank lending subsidiaries, including an analysis of data reported by National City under the Home Mortgage Disclosure Act ("HMDA"),[15] and the branch closing policies of National City and found the record of the Allegiant proposal to be consistent with approval.

A. Summary of Public Comments on Convenience and Needs Considerations

In response to the Board's request for public comment on this proposal, approximately 56 commenters submitted their views. Of these commenters, approximately 51 commenters supported the proposal by generally

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[14] 12 U.S.C. § 2901 et seq.

[15] 12 U.S.C. § 2801 et seq.

commending National City or Provident for providing financial and technical support to their community development organizations or businesses. Other commenters related their favorable experiences with specific programs or services offered by National City or Provident.

Five commenters opposed the proposal. These commenters expressed concern about the subprime lending activities of First Franklin Financial Corporation, San Jose, California ("First Franklin"), a subsidiary of National City Bank of Indiana, Indianapolis, Indiana ("NC Indiana"), that originates home mortgage loans, including subprime loans. Commenters also asserted, based on data reported under the HMDA, that National City engages in discriminatory treatment of African-American and Hispanic individuals in its home mortgage lending operations. In addition, commenters expressed concern about potential branch closings resulting from this proposal and the percentage of Provident Bank branches in LMI and predominantly minority areas.

B. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16] At their most recent CRA evaluations by the OCC, National City Bank, Cleveland ("NC Bank"), National City's largest bank as measured by total deposits, received an "outstanding" rating, and NC Indiana,

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[16] See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

National City's largest bank as measured by total assets, received a "satisfactory" rating.[17] In addition, National City's six other subsidiary banks received either "outstanding" or "satisfactory" ratings at their most recent CRA evaluations.[18]

The Board has carefully reviewed the CRA performance records of the insured depository institution subsidiaries of National City. A summary of the most recent CRA evaluations of NC Bank and NC Indiana was included in the National City/Allegiant Order. Based on its review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the National City/Allegiant Order.

NC Bank's most recent CRA evaluation characterized its overall record of home mortgage and small business lending as excellent[19] and praised the bank's level of community development lending. Examiners noted favorably the use of several flexible lending products designed to address affordable housing needs of LMI individuals and commended the bank's level of qualified investments. In addition, examiners reported that NC Bank's community development services were excellent and praised the distribution of the bank's branches. At NC Indiana's most recent CRA performance evaluation, examiners

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[17] Both ratings are as of February 22, 2000.

[18] Appendix C lists the most recent CRA ratings of National City's bank subsidiaries, including the recently acquired Allegiant Bank, St. Louis, Missouri.

[19] In evaluating the records of performance under the CRA of NC Bank and NC Indiana, examiners considered home mortgage loans by certain affiliates in the banks' assessment areas. The loans reviewed by examiners included loans reported by National City Mortgage Corporation, Miamisburg, Ohio ("NC Mortgage") (a subsidiary of NC Indiana); National City Mortgage Services, Kalamazoo, Michigan ("NC Mortgage Services") (a subsidiary of National City Bank of Michigan/Illinois, Bannockburn, Illinois); and other bank and nonbank affiliates of NC Bank.

commended the bank's record of home mortgage lending among borrowers of different income levels and its community development lending. NC Indiana's most recent evaluation also commended its strong level of qualified investments and characterized the distribution of the bank's branches throughout its assessment area, including LMI geographies, as excellent.

Provident Bank, Provident's only subsidiary bank, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland, as of March 11, 2002. National City has indicated that its CRA and consumer compliance programs would be implemented at Provident on consummation of the proposal.

At Provident Bank's most recent CRA performance evaluation, examiners concluded that the bank's lending activity reflected an excellent responsiveness to assessment-area credit needs. Examiners commended Provident Bank's home mortgage lending record and noted that it demonstrated an excellent geographic distribution of HMDA-reportable loans, especially in LMI areas and among borrowers of different incomes. They also reported that the bank had a good geographic distribution of small business loans. In addition, examiners commended the bank for its significant level of community development lending and investments and reported that such investments supported the development of LMI housing. They indicated that Provident Bank has taken a leadership role in community development services, noting that the bank provides services that promote affordable housing and economic development. In addition, examiners stated that Provident Bank's branches and automated teller machines are reasonably accessible to all segments of the bank's assessment areas.

C. HMDA Data, Subprime Lending, and Fair Lending Record

The Board has carefully considered the lending record of and HMDA data reported by National City in light of public comment. Based on their review of HMDA data, commenters primarily contended that National City's lending operations are organized in a manner to direct First Franklin's higher priced loans disproportionately to minority and LMI borrowers and in LMI and predominantly minority communities, as compared with the other subsidiaries of National City engaged in home mortgage lending, including National City's bank subsidiaries, NC Mortgage, and NC Mortgage Services (collectively, "National City Lenders").[20] In addition, commenters criticized other aspects of the lending activities of First Franklin and the National City Lenders.[21]

The Board reviewed HMDA data reported by all of National City's bank and nonbank lending subsidiaries in the MSAs identified by the commenters and focused its analysis on the MSAs that comprise the assessment areas of the National City Lenders in Ohio, Illinois, Indiana, Kentucky, and Michigan. The

[20] Two commenters asserted that First Franklin's market share is disproportionately concentrated in LMI and predominantly minority areas in Ohio and that the National City Lenders have ignored these areas. Another commenter asserted that, in 2002, First Franklin originated a higher volume and a larger percentage of its HMDA-reportable loans to African-American or Hispanic borrowers than NC Bank. The commenter compared 2002 HMDA data reported by First Franklin and NC Bank in the Metropolitan Statistical Areas ("MSAs") of Cincinnati, Columbus, and Dayton, but did not include HMDA data reported by other National City lending subsidiaries in those areas.

[21] Commenters criticized First Franklin's use of loan brokers to distribute its products, including the payment of yield spread premiums to brokers. Another commenter criticized the level of due diligence performed by Provident in providing warehouse lines of credit to subprime lenders and criticized National City for financing payday lending operations.

analysis included a comparison of the HMDA data of First Franklin with combined data submitted by the National City Lenders.[22]

An analysis of 2002 HMDA data does not support the contention that National City disproportionately directs First Franklin's loans to minority and LMI borrowers and in LMI and predominantly minority communities as compared with the National City Lenders. The 2002 HMDA data indicate that the National City Lenders extended a larger number of HMDA-reportable loans to African-American borrowers than did First Franklin in the MSAs reviewed. In addition, the percentage and number of HMDA-reportable loans by the National City Lenders to Hispanics were generally comparable with or exceeded the percentage and number for First Franklin in each of the MSAs reviewed. The HMDA data indicate that the percentage of total HMDA-reportable loans made to African-American and Hispanic borrowers and in LMI and minority census tracts[23] by the National City Lenders generally remained the same or increased from 2002 to 2003. The HMDA data also indicate the National City Lenders generally performed favorably when compared with the aggregate lenders. The percentage of total HMDA-reportable loans originated to African-American and Hispanic borrowers by the National City Lenders was comparable to the aggregate lenders in most of the MSAs reviewed.

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[22] The Board analyzed HMDA data for 2001 through 2003 for National City and HMDA data for 2001 and 2002 for the aggregate of lenders in the areas reviewed ("aggregate lenders"). The 2003 HMDA data are preliminary and 2003 data for the aggregate lenders are not yet available.

[23] For purposes of this HMDA analysis, minority census tract means a census tract with a minority population of 80 percent or more.

Moreover, the denial disparity ratios[24] of the National City Lenders for African-American and Hispanic applicants for total HMDA-reportable loans were generally comparable to or lower than those of aggregate lenders in a majority of the MSAs reviewed.[25] In addition, the National City Lenders' origination rates for total HMDA-reportable loans to Hispanics and African Americans were comparable to or exceeded the rates for aggregate lenders in each of the MSAs reviewed.[26]

The Board recognizes that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans. Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including public and confidential supervisory information, information on the use of loan brokers by First Franklin to distribute its loans, and information submitted by National City on its policies and procedures to ensure compliance with fair lending laws and to guard against abusive lending practices.

Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of National City's subsidiary banks or the lending subsidiaries of these banks at their most recent CRA performance evaluations. The

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[24] The denial disparity ratio equals the denial rate for a particular racial category (for example, African American) divided by the denial rate for whites.

[25] Two commenters also alleged that the denial disparity ratios of some of National City's bank subsidiaries in certain markets indicated that the banks disproportionately denied African-American or Hispanic applicants for home mortgage loans.

[26] The origination rate equals the total number of loans originated to applicants of a particular racial category divided by the total number of applications received from members of that racial category.

Board also consulted with the OCC, which has responsibility for enforcing compliance with fair lending laws by national banks and their subsidiaries, about this proposal, the comments received by the Board criticizing the lending activities of First Franklin, and the record of performance of National City's banks and their subsidiaries since the last examination.

As discussed in the National City/Allegiant Order, National City has taken several affirmative steps to ensure compliance with fair lending laws and to prevent abusive lending practices at First Franklin and the National City Lenders. National City represented that all loan applicants are evaluated individually on their credit qualifications and the loans they receive are based on those qualifications. National City has a centralized compliance function and has implemented corporate-wide compliance policies and procedures to help ensure that all the business lines of National City, including First Franklin, comply with fair lending and other consumer protection laws and regulations. Compliance officers and staff are responsible for compliance training and monitoring. National City also conducts file reviews for compliance with federal and state consumer protection rules and regulations for all product lines and origination sources, including First Franklin. In addition, National City regularly performs self-assessments of its fair lending law compliance and fair lending policy training for its employees. National City represented that its corporate consumer compliance program will be implemented at Provident Bank after consummation of the proposal.[27]

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[27] Based on a review of a sample of First Franklin's loans that ended in foreclosure, one commenter expressed concern about certain terms, such as high interest rates with balloon payments, prepayment penalties, and adjustable interest rates, including "teaser rates," and other lending practices of First Franklin. In addition, commenters criticized National City for not having procedures for referring to the National City Lenders loan applicants of First Franklin who qualify

The Board also reviewed the use of loan brokers by First Franklin in distributing its loan products and concluded that this practice does not appear to have resulted in the disparate treatment of minorities or LMI individuals. National City represented that First Franklin has implemented a detailed program for establishing relationships with brokers, which includes the review of a prospective broker's license status, financial condition, and background. In addition, National City stated that, although the National City Lenders and First Franklin have relationships with brokers and correspondents that provide subprime credit as some portion of their business, National City does not pursue business relationships with brokers or correspondents that originate subprime loans exclusively. National City also represented that loan brokers are not chosen based on their geographic location or the income, race, or ethnicity of residents in the brokers' locations.

The Board also has considered the HMDA data, subprime lending, and fair lending record of National City in light of other information, including the CRA performance records of National City's subsidiary banks discussed above and in the National City/Allegiant Order, and public comment. These records demonstrate that National City is active in helping to meet the credit needs of its entire community.

D. Branch Closings

One commenter expressed concern about the effect of branch closings that might result from this proposal. The Board has considered those concerns in

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for credit at those affiliates. As discussed above, National City has represented that all loan applicants are evaluated individually on their credit qualifications and the loans they receive are based on those qualifications. In addition, National City has a substantial compliance program in place to ensure that First Franklin does not engage in abusive lending practices. The Board also notes that the terms of loans offered by First Franklin that were criticized by the commenter are not, in and of themselves, abusive, and the fact that some of these terms are present in foreclosed loans does not itself indicate that these terms are inappropriate or abusive.

light of all the facts of record. National City represented that it is in the process of determining whether to close branches in markets where there is overlap and that any closures or consolidations of branches will be conducted in accordance with National City's Branch Closing Policy and Procedures. The Board carefully considered National City's branch closing policy and its record of opening and closing branches in the National City/Allegiant Order. In addition, examiners reviewed National City's branch closing policy as part of the most recent CRA evaluations of each of National City's banks and found that it complied with federal law.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[28] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory before closing a branch. In addition, the Board notes that the OCC, as the appropriate federal supervisor of NC Bank, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

E. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by National City, public comments on the proposal, and confidential supervisory information. Based on a review of the entire record, and for the

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[28] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

reasons discussed above and in the National City/Allegiant Order, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Nonbanking Activities

National City also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire Provident Investment Advisors, Inc., also in Cincinnati ("Investment Advisors"), which engages in investment advisory activities. The Board has determined by regulation that this activity is permissible for bank holding companies under the Board's Regulation Y,[29] and National City has committed to conduct these activities in accordance with the Board's regulations and orders for bank holding companies engaged in these activities.

To approve the notice, the Board must determine that National City's acquisition of Investment Advisors and the performance of the proposed activities "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[30] As part of its evaluation of these factors, the Board has considered the financial and managerial resources of National City, its subsidiaries, and the company to be acquired, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board concludes that financial and managerial considerations are consistent with approval of the notice.

The Board also has considered the competitive effects of National City's proposed acquisition of Provident's nonbanking subsidiary in

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[29] See 12 C.F.R. 225.28(b)(6).

[30] See 12 U.S.C. § 1843(j)(2)(A).

light of all the facts of record. National City and Provident engage in activities related to investment advice. The market for the activity is regional or national in scope and unconcentrated. The record in this case also indicates that there are numerous providers of these services. Accordingly, the Board concludes that National City's acquisition of Investment Advisors would not have a significantly adverse effect on competition in any relevant market.

National City has indicated that the proposal would allow National City to provide an expanded array of services to individuals, businesses, and governmental units in a wider geographic area and provide customers of Provident a full array of brokerage services. Based on all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of section 4 of the BHC Act.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved.[31]

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[31] A commenter requested that the Board extend the comment period on this proposal. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public reports and information, and public comment. In the Board's view, interested persons had ample opportunity to submit views on the proposal and, in fact, the commenter has provided written submissions that the Board has considered carefully in acting on this proposal. The commenter's request for additional time to comment does not identify extraordinary circumstances that would justify an extension of the public comment period for this case. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. 12 U.S.C. § 1842(b); 12 C.F.R. 225.15(d). Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant Board action at this time and that an extension of the comment period is not warranted. Accordingly, the request for an extension of the comment period is denied.

In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes.[32] The Board's approval is specifically conditioned on compliance by National City with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice, including compliance with state law. The Board's approval of the nonbanking aspects of the proposal is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure

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[32] Commenters also requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). Section 4 of the BHC Act and the Board's regulations provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 C.F.R. 225.25(a)(2). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their evidence adequately and fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. The commitments made to the Board in the application process are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

The acquisition of Provident Bank may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors,[33] effective June 8, 2004.

(signed)

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Robert deV. Frierson
Deputy Secretary of the Board

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[33] Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

APPENDIX A

Ohio Banking Market Definitions

Cleveland
Cuyahoga, Lake, Lorain, and Geauga Counties; Sagamore Hills, Northfield Center, Twinsburg, Richfield, Boston, and Hudson townships in Summit County; Medina County, excluding Homer, Harrisville, Westfield, Guilford, Wadsworth and Sharon townships; Aurora and Streetsboro townships in Portage County; and the City of Vermillion in Erie County.

Columbus
Franklin, Delaware, Fairfield, Licking, Madison, Pickaway, and Union Counties; Perry township in Hocking County; and Thorn township in Perry County.

Dayton
Montgomery, Miami, and Greene Counties; Bethel and Mad River townships in Clark County; and Clear Creek, Wayne, and Massie townships in Warren County.

Springfield
Clark County, excluding Bethel and Mad River townships.

APPENDIX B

Ohio Banking Markets in which National City and Provident Compete Directly

Cleveland
National City operates the second largest depository institution in the Cleveland banking market, controlling $15 billion in deposits, representing 25.8 percent of market deposits. Provident operates the 25th largest depository institution in the market, controlling $65.8 million in deposits, representing less than 1 percent of market deposits. On consummation of the proposal, National City would operate the second largest depository institution in the market, controlling deposits of $15 billion, representing approximately 25.9 percent of market deposits. The HHI would increase 6 points to 1,990. Thirty-seven bank and thrift competitors would remain in the market.

Columbus
National City operates the fourth largest depository institution in the Columbus banking market, controlling $2.3 billion in deposits, representing 8.3 percent of market deposits. Provident operates the 40th largest depository institution in the market, controlling $29.4 million in deposits, representing less than 1 percent of market deposits. On consummation of the proposal, National City would operate the fourth largest depository institution in the market, controlling deposits of $2.3 billion, representing approximately 8.4 percent of market deposits. The HHI would increase 2 points to 1,996. Fifty-one bank and thrift competitors would remain in the market.

Dayton
National City operates the third largest depository institution in the Dayton banking market, controlling $1.4 billion in deposits, representing 15.3 percent of market deposits. Provident operates the sixth largest depository institution in the market, controlling $446.5 million in deposits, representing 5 percent of market deposits. On consummation of the proposal, National City would operate the second largest depository institution in the market, controlling deposits of $1.8 billion, representing approximately 20.4 percent of market deposits. The HHI would increase 155 points to 1,657. Twenty-six bank and thrift competitors would remain in the market.

Springfield

National City operates the third largest depository institution in the Springfield banking market, controlling $187 million in deposits, representing 19.3 percent of market deposits. Provident operates the seventh largest depository institution in the market, controlling $36.6 million in deposits, representing 3.8 percent of market deposits. On consummation of the proposal, National City would operate the third largest depository institution in the market, controlling $223.5 million in deposits, representing approximately 23.1 percent of market deposits. The HHI would increase 146 points to 1,967. Eight bank and thrift competitors would remain in the market.

APPENDIX C

CRA Performance Evaluations of National City

Subsidiary Bank	CRA Rating	Date	Supervisor
1. National City Bank, Cleveland, Ohio	Outstanding	February 2000	OCC
2. National City Bank of Indiana, Indianapolis, Indiana	Satisfactory	February 2000	OCC
3. The Madison Bank and Trust Company, Madison, Indiana	Outstanding	May 1999	FDIC
4. National City Bank of Kentucky, Louisville, Kentucky	Satisfactory	February 2000	OCC
5. National City Bank of Michigan/Illinois, Bannockburn, Illinois	Outstanding	February 2000	OCC
6. National City Bank of Pennsylvania, Pittsburgh, Pennsylvania	Outstanding	February 2000	OCC
7. National City Bank of Southern Indiana, New Albany, Indiana	Satisfactory	February 2000	OCC
8. Allegiant Bank, St. Louis, Missouri	Satisfactory	October 2001	FDIC