

FEDERAL RESERVE press release



For immediate release

June 23, 1997

The Federal Reserve Board today announced its approval of the applications and notices of First Bank System, Inc., Minneapolis, Minnesota, to acquire U.S. Bancorp, Portland, Oregon, and thereby acquire U.S. Bancorp's banking and nonbanking subsidiaries.

Attached is the Board's Order relating to this action.

Attachment

FEDERAL RESERVE SYSTEM

First Bank System, Inc.
Minneapolis, Minnesota

Order Approving the Acquisition of a Bank Holding Company

First Bank System, Inc., Minneapolis, Minnesota ("First Bank System"), a bank 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 U.S. Bancorp, Portland, Oregon ("U.S. Bancorp"), and its subsidiary banks listed in Appendix A.^{1/} First Bank System also has requested the Board's approval under section 4(c)(8) of the BHC Act (12 U.S.C. § 1843(c)(8)) and section 225.24 of Regulation Y (12 C.F.R. 225.24) to acquire the nonbanking subsidiaries of U.S. Bancorp and thereby engage in the nonbanking activities listed in Appendix B.^{2/}

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (62 Federal Register 19,762 (1997)). The time for filing comments has expired, and the Board has considered the proposal

^{1/} First Bank System proposes to exchange its shares for all the outstanding shares of U.S. Bancorp. On consummation, U.S. Bancorp would be merged with and into First Bank System, which would change its name to U.S. Bancorp. First Bank System also has requested the Board's approval to exercise an option to purchase up to 19.9 percent of the voting shares of U.S. Bancorp. The option would become moot on consummation of the proposal.

^{2/} First Bank System also has filed a notice under section 4(c)(14) of the BHC Act (12 U.S.C. § 1843(c)(14)) and section 211.34 of the Board's Regulation K (12 C.F.R. 211.34) to acquire U.S. Bancorp's subsidiary, U.S. World Trade Corporation, Portland, Oregon, an export trading company.

and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

First Bank System, with total consolidated assets of approximately \$36.5 billion, is the 25th largest commercial banking organization in the United States, controlling less than 1 percent of the total banking assets of insured commercial banks in the nation ("total banking assets").^{3/} First Bank System's subsidiary banks operate in Colorado, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.^{4/} First Bank System also engages through other subsidiaries in a number of permissible nonbanking activities. U.S. Bancorp, with total consolidated assets of approximately \$33.4 billion, is the 27th largest commercial banking organization in the United States, controlling less than 1 percent of total banking assets in the nation. U.S. Bancorp operates subsidiary banks in California, Idaho, Nevada, Oregon, Utah, and Washington, and engages through subsidiaries in a broad range of permissible nonbanking activities.^{5/}

On consummation of the proposal, First Bank System would become the 14th largest commercial banking organization in the United States, with total consolidated assets of approximately \$69.9 billion, representing

^{3/} Asset, deposit, and ranking data are as of December 31, 1996.

^{4/} First Bank System recently merged or consolidated its subsidiary banks in Colorado, Illinois, Nebraska, Wisconsin, and East Grand Forks, Minnesota, certain assets of its subsidiary bank in South Dakota, and its savings association operating in Iowa, Kansas, Minnesota, Nebraska, North Dakota, and Wyoming into its lead subsidiary bank, First Bank National Association, Minneapolis, Minnesota. In addition, First Bank System also owns First Bank Montana, N.A., Billings, Montana, and First Bank of South Dakota, N.A., Sioux Falls, South Dakota.

^{5/} The Office of the Comptroller of the Currency ("OCC") recently approved a proposal by U.S. Bancorp to merge all its existing subsidiary banks with and into its lead subsidiary bank, U.S. National Bank of Oregon, Portland, Oregon.

1.5 percent of total banking assets in the United States. First Bank System would control 1.6 percent of the total deposits in banks and savings associations insured by the Federal Deposit Insurance Corporation ("FDIC").

Interstate Banking Analysis

Section 3(d) of the BHC Act, as amended by Section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, allows the Board to approve an application by a bank holding company to acquire a bank located in a state other than the home state of such bank holding company if certain conditions are met.^{6/} For purposes of the BHC Act, First Bank System's home state is Minnesota, and First Bank System proposes to acquire banks located in California, Idaho, Nevada, Oregon, Utah, and Washington. The conditions for an interstate acquisition under section 3(d) are met in this case.^{7/} In view of all the facts of record, the Board is permitted to approve this proposal under section 3(d) of the BHC Act.

Competitive Considerations

The BHC Act prohibits the Board from approving an application under section 3 of the BHC Act if the proposal would result in a monopoly or if the effect of the proposal may be substantially to lessen competition in any relevant market,

^{6/} Pub. L. No. 103-328, 108 Stat. 2338 (1994). A bank holding company's home state is the state in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

^{7/} 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). First Bank System is adequately capitalized and adequately managed. On consummation of the proposal, First Bank System would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. In addition, all the banks to be acquired by First Bank System have been in existence for the minimum period of time necessary to satisfy age requirements established by applicable state laws. All other requirements of section 3(d) of the BHC Act also would be met on consummation of the proposal.

unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.

First Bank System and U.S. Bancorp do not compete with each other in any geographic banking market. Based on all the facts of record, the Board has concluded 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.^{8/}

Other Factors Under the BHC Act

The BHC Act also requires the Board, in acting on an application, to consider the financial and managerial resources of the companies and banks involved, the convenience and needs of the communities to be served, and certain other supervisory factors.

^{8/} The Board has reviewed comments maintaining that the proposed combination of two large banking organizations would have anticompetitive effects and that the proposal could result in increased fees or lower deposit rates. Commenters present no facts to support these contentions. In order to determine the effect of a particular transaction on competition under the BHC Act, it is necessary first to designate the area of effective competition between the parties. The courts have held that the area of effective competition is determined by reference to the "line of commerce" or product market and a geographic market. The appropriate product market for evaluating the competitive effects of acquisitions of depository institutions is the cluster of products and services offered by such institutions. See Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1997). The Board and the courts also have concluded that the relevant banking market for analyzing the competitive effects of a proposal must reflect commercial and banking realities and should consist of the local area where the banks involved offer their services and where local customers can practicably turn for alternatives. Id. As noted, First Bank System and U.S. Bancorp do not offer products or services to customers in the same local banking markets.

A. Financial, Managerial, and Other Supervisory Factors

The Board has carefully considered the financial and managerial resources and future prospects of First Bank System, U.S. Bancorp, and their respective subsidiary banks and other supervisory factors in light of all the facts of record. The Board notes that the bank holding companies and their subsidiary banks are currently well capitalized and are expected to remain so after consummation of the proposal. The Board also has considered other aspects of the financial condition and resources of the two organizations, the structure of the proposed transaction, and the managerial resources of the entities and the combined organization, the Board's supervisory experience with First Bank System and U.S. Bancorp, and examinations by the OCC and other federal banking authorities assessing the financial and managerial resources of the entities. Based on all the facts of record, including all comments received and relevant reports of examination of the companies and banks involved in this proposal, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of First Bank System, U.S. Bancorp, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.^{2/}

^{2/} Several commenters allege that U.S. Bancorp's subsidiary banks have acted improperly in foreclosure, bankruptcy, or other legal proceedings arising from individual loan transactions or have breached settlements reached in connection with those proceedings. The Board has carefully reviewed these allegations in light of examiners' assessments of the managerial resources in reports of examination for the relevant institutions, including the institutions' policies and procedures for administering loans. The Board notes that most of the contentions are or have been in litigation and, so far, no court has found that any commenter is entitled to relief. The courts, moreover, have the full authority to grant adequate remedies for all the improper actions alleged by the commenters if they can substantiate their claims of improper conduct by the relevant subsidiary bank of U.S. Bancorp. The Board has provided a copy of

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B. Convenience and Needs Factor

The Board has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record. In reviewing the convenience and needs aspects of the proposal, the Board notes that First Bank System and U.S. Bancorp assist in meeting the convenience and needs of their communities by providing a full range of financial services, including commercial and retail banking, trust and investment management, and community development services through various bank and nonbank subsidiaries.

After consummation of the transaction, First Bank System would meet the needs of its communities and the communities formerly served by U.S. Bancorp through a Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA") program that would retain the current structure and focus of the two entities. The combined organization would continue to have a CRA manager assigned to each state, who would be responsible for coordinating community reinvestment efforts in that state. In addition, senior management and the board of directors of the combined organization would continue to oversee CRA policy through the Senior CRA Policy Committee and the Credit Policy and Community Responsibility Committee of the board of directors.

First Bank System also states that the combined organization would enhance the products and services available to the customers of each institution. First Bank System intends, for example, to offer U.S. Bancorp's small business loan program to First Bank System customers and to offer its affordable housing programs for low-

^{2/}(...continued)

the comments to the OCC, the primary federal supervisor of the banking institutions involved, and to the Department of Justice for consideration and review. The Board also has considered commenters' contentions in connection with its evaluation of the convenience and needs factor discussed later in the order.

and moderate-income ("LMI") borrowers to U.S. Bancorp's customers if the programs better serve their credit needs.

CRA Performance Examinations

As provided in the CRA, the Board evaluates the convenience and needs factor in light of examinations of the CRA performance records of the relevant institutions by their primary federal supervisor. 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 primary federal supervisor.^{10/}

All subsidiary depository institutions of First Bank System and U.S. Bancorp received "outstanding" or "satisfactory" ratings from their primary supervisors at their most recent examinations for CRA performance.^{11/} First Bank System's lead subsidiary bank, First Bank National Association, Minneapolis, Minnesota ("First Bank"), with approximately 47 percent of First Bank System's consolidated assets, received an "outstanding" rating from the OCC at its most recent examination for CRA performance, as of July 1995 ("First Bank Examination").^{12/} U.S. Bancorp's lead subsidiary bank, U.S. National Bank of Oregon, Portland, Oregon ("U.S. Bank"), with approximately 43 percent of U.S.

^{10/} The Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act provides that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record, and that reports of these examinations will be given great weight in the applications process. 54 Federal Register 13,742, 13,745 (1989).

^{11/} The most recent CRA performance ratings for First Bank System's and U.S. Bancorp's subsidiary banks are set forth in Appendices C and D.

^{12/} Asset data used in this section of the order are as of September 30, 1996, and do not reflect the recent mergers and consolidations of other subsidiary banks and a subsidiary thrift with and into First Bank.

Bancorp's consolidated assets, also received an "outstanding" rating from the OCC at its most recent examination for CRA performance, as of April 1997 ("U.S. Bank Examination"). Overall, banks with more than 60 percent of the consolidated assets of First Bank System, and more than 70 percent of the consolidated assets of U.S. Bancorp, received "outstanding" CRA performance ratings at their most recent examinations. The Board also has considered other aspects of the CRA performance records of First Bank System and U.S. Bancorp in light of all the facts of record, including the lending activities of their subsidiary banks in states that were specifically mentioned by commenters.

Lending Performance Record of First Bank System

Minnesota. The First Bank Examination concluded that the delineated community served by First Bank was reasonably defined and did not arbitrarily exclude any LMI areas. Examiners also concluded that First Bank effectively identified credit needs within its community, with a particular emphasis on the needs of LMI areas. Examiners noted, for example, that First Bank placed special emphasis on marketing its products within LMI and minority areas of its community, and that the bank's ascertainment efforts through public/private partnerships had produced credit products that assisted in meeting the credit needs of all the communities served by the bank. First Bank actively participated in government-sponsored programs offering housing-related and small business loans.^{13/}

In 1996, First Bank System originated 8,213 consumer loans totalling approximately \$73 million and 1,192 small business loans totalling approximately \$117 million within LMI areas in Minnesota. Small business lending totalled approximately \$569 million for the entire state. First Bank System also made 261

^{13/} Examiners noted that, in 1994, First Bank originated 23,823 government-sponsored loans totalling approximately \$220 million. First Bank also originated 4,506 small business loans totalling approximately \$91.2 million to businesses and farms located in Minnesota.

Home Advantage loans totalling approximately \$13.1 million to LMI borrowers,^{14/} and 163 government-sponsored housing loans totalling approximately \$13.3 million in Minnesota. First Bank System also originated 7,062 loans to businesses and individuals in rural areas in Minnesota totalling \$176.7 million.

Colorado. According to the most recent CRA performance examination of Colorado National Bank, Denver, Colorado ("Colorado Bank"), the bank's community delineation was reasonable and did not arbitrarily exclude any LMI areas. Moreover, examiners found that Colorado Bank had in place a strong program to identify credit needs effectively in each of its delineated communities, including LMI neighborhoods. In particular, the bank devoted special attention to identifying the credit needs of individuals in LMI and minority areas and developed successful credit products as a result of this program, including small business loans made in conjunction with the Mainstreet Loan Center. Colorado Bank offered both traditional and special credit products to meet the credit needs of its communities.^{15/} Examiners also found that Colorado Bank's credit products were effectively marketed throughout all segments of the bank's delineated communities, including through marketing efforts concentrating on LMI and minority areas.

^{14/} Home Advantage allows home buyers to obtain housing that could not be financed due to its age or condition by providing the additional financing needed to renovate the property. In addition, Home Advantage provides zero percent "gap" financing to LMI borrowers when renovation costs exceed appraised value and zero percent downpayment assistance loans to borrowers earning less than 80 percent of the relevant area's median income. In 1996, First Bank System provided almost \$800,000 in zero percent home buyer assistance loans for down payments and other purposes.

^{15/} In 1994, Colorado Bank originated 2,885 small business loans totalling \$33.2 million and 14,600 government-sponsored loans totalling approximately \$226.4 million.

In 1996, First Bank System originated 13,381 consumer loans totalling approximately \$117.9 million and 1,630 small business loans totalling approximately \$107.5 million in LMI areas in Colorado. First Bank System also made 25 Home Advantage loans to LMI Colorado home buyers totalling approximately \$1.7 million, and 223 government-sponsored housing loans in Colorado totalling approximately \$17.7 million. In rural areas, First Bank System originated 5,288 loans to businesses and individuals totalling approximately \$97.1 million.

Montana. Examiners found that the delineated community for First Bank Montana, N.A., Billings, Montana ("Montana Bank"), was reasonable and did not arbitrarily exclude any LMI areas. In addition, the geographic distribution of Montana Bank's loan portfolio was considered to reasonably penetrate all segments of the delineated community, including LMI areas. Examiners also noted that Montana Bank frequently participated in government-sponsored loan programs.^{16/}

In 1996, First Bank System made 670 consumer loans totalling approximately \$6.8 million and 243 small business loans totalling approximately \$22.4 million in LMI areas in Montana. Small business lending for the state totalled approximately \$70 million. First Bank System also originated 15,608 loans to businesses and individuals located in rural areas totalling approximately \$247.1 million.

South Dakota. According to examiners in the most recent CRA performance examination of First Bank of South Dakota, N.A., Sioux Falls, South Dakota ("South Dakota Bank"), the bank served a reasonably delineated community that did not arbitrarily exclude LMI areas, and the bank's lending activities

^{16/} In 1994, Montana Bank originated more than \$35 million in such loans. The bank also made 817 small business loans totalling approximately \$24 million, including 155 loans totalling approximately \$6.5 million for agricultural purposes.

addressed a significant portion of the community's identified credit needs, including housing, small business, and small farm credit needs. South Dakota Bank's loans were considered to be geographically distributed in a manner that reasonably penetrated all parts of its community, including LMI areas.^{17/}

First Bank System made 3,144 loans to businesses and individuals located in rural areas in South Dakota totalling approximately \$59.7 million in 1996. Statewide, First Bank System originated 1,319 small business loans totalling \$99 million. Within LMI areas, First Bank System made 376 small business loans totalling \$43.4 million and 952 consumer loans totalling approximately \$8.9 million. First Bank System also made 17 government-sponsored housing loans totalling \$1.2 million.

North Dakota and Wyoming. First Bank System formerly served communities in North Dakota and Wyoming through First Bank, fsb, Fargo, North Dakota ("First Savings Bank"). Examiners found that the delineated community of First Savings Bank was reasonable and did not arbitrarily exclude LMI areas. In 1995, First Savings Bank made 579 small business loans totalling \$42 million in North Dakota, including approximately 19 percent of those small business loans in LMI areas.^{18/} In Wyoming, First Savings Bank made 204 small business loans totalling approximately \$18.4 million in 1995, including 19 percent of its small business loans in LMI areas in that state.

^{17/} Examiners noted that South Dakota Bank originated 465 mortgage loans, 36 small business loans, and 28 agricultural loans totalling approximately \$27 million, \$1.2 million, and \$900,000, respectively, in 1994.

^{18/} First Bank System also sponsored a \$300,000 Federal Home Loan Bank Affordable Housing Program grant for the revitalization of Little Earth of United Tribes Housing Corporation, a nonprofit corporation that provides urban housing owned and controlled by Native Americans.

Other Banks. First Bank System's remaining subsidiary banks were found by the OCC to have delineated communities that were reasonable and did not arbitrarily exclude LMI areas. In addition, the geographic distribution of the loan portfolios of these subsidiary banks was found to reasonably penetrate all parts of the delineated community, including LMI areas. All of the subsidiary banks were found to have a level of participation in community development projects that was consistent with the resources of the bank and local economic conditions.

Lending Performance Record of U.S. Bancorp

Oregon. The U.S. Bank Examination concluded that the bank's ascertainment of community credit needs was effective and extensive. U.S. Bank identified the credit needs of its community through community forums in rural and metropolitan areas of the state, market research, and employee involvement in community organizations. Examiners also noted that U.S. Bank took affirmative steps to address those identified credit needs. In 1995, for example, U.S. Bank developed and introduced the U.S. Simply Small Business Loan Program that served businesses with credit needs of less than \$35,000. Examiners also found that U.S. Bank's marketing strategies for its new products were designed to reach all segments of the bank's delineated community, including LMI areas. In addition, U.S. Bank used comprehensive geographic analysis to develop marketing strategies to reach specific segments of its community. Based on this market research, in October 1995, U.S. Bank introduced a pre-approved consumer installment loan to individuals in LMI communities in Oregon. U.S. Bank also had a comprehensive advertising campaign designed to reach the mass market through television, radio, print, billboard, and direct mail, and to reach particular segments of the community through advertisements in ethnic media, foreign language publications, and community newspapers and on radio stations that reach farmers and other rural residents.

From 1994 through 1996, U.S. Bank originated 20,203 small business loans for approximately \$2.46 billion in Oregon, including 3,307 loans totalling approximately \$84 million under the U.S. Simply Small Business Loan Program. Through the Commercial Opportunity Loan Program, U.S. Bank offers flexible collateral requirements for businesses owned by women and minorities and businesses in economically distressed areas. The bank originated 618 loans under the program totalling approximately \$24 million.

U.S. Bank also offers a variety of lending products to address the credit needs of LMI individuals. HomePartners U.S. provides housing-related credit for LMI home buyers through flexible underwriting criteria that include the amount of down payment, debt-to-income ratios, credit histories, and a waiver of private mortgage insurance. From 1994 to 1996, U.S. Bank originated 563 HomePartners U.S. loans totalling \$40 million. U.S. Bank also participates in the Oregon State Bond Mortgage Loan Program, which subsidizes below-market lending rates for LMI home buyers. Through this program, U.S. Bank originated 269 loans for \$19 million. In addition, U.S. Bank offers special consumer lending programs such as the Consumer Opportunity Loan Program, which provides flexible underwriting criteria for LMI borrowers. The bank originated 1,598 Consumer Opportunity Loans for approximately \$6.4 million.

U.S. Bank also participates in government-sponsored lending programs. The bank originated more than \$336 million in government-sponsored loans, including \$31 million in Small Business Administration loans, \$66 million in housing-related loans, and \$220 million in student loans. In addition, U.S. Bank provided \$9.7 million in loans to six Native American tribes through its Native American Tribal Community Development Program.^{19/}

^{19/} U.S. Bancorp also contributes to organizations that provide technical

Washington. Examiners found that the ascertainment efforts of U.S. Bank of Washington, N.A., Seattle, Washington ("USBW"), were extensive and effective, and that USBW took steps to address identified community credit needs. For example, since implementing the U.S. Simply Small Business Loan Program, USBW has originated 1,947 loans totalling \$49 million. Examiners also found that products were introduced to the community through marketing strategies designed to reach all segments of the bank's delineated community, including LMI areas. According to examiners, USBW showed a very strong commitment to lending in its community by offering a variety of loan products designed to meet community credit needs and maintained a leadership position in community development and redevelopment programs.

From 1994 through 1996, USBW originated 18,102 small business loans in Washington totalling \$3.2 billion. USBW also made more than \$531 million in government-sponsored loans and provided financing totalling \$68.2 million for 29 affordable housing projects with 2,136 units of affordable housing.^{20/} Since 1994, USBW has extended more than \$31.6 million in community development loans to Native Americans and Native American organizations.

Idaho. The most recent CRA performance examination of U.S. Bank of Idaho, Boise, Idaho ("Idaho Bank"), showed that the geographic distribution of the bank's credit extensions and applications reflected a reasonable penetration of all segments of its local community, including LMI neighborhoods. Examiners also found that Idaho Bank's community delineation met the purposes of the CRA and

^{19/}(...continued)

assistance and support to businesses owned by Native Americans and to hospital and medical centers that provide health services to Native Americans.

^{20/} Although USBW sold its mortgage subsidiary in 1994, the bank continues to finance affordable housing projects through a nonbank affiliate that specializes in community development lending.

did not arbitrarily exclude LMI areas. Moreover, the bank's lending volume was determined to represent an effective response to community credit needs, including the credit needs of LMI areas.

Idaho Bank also assists in meeting the credit needs of its communities in Idaho through lending programs that focus on rural communities and LMI borrowers. In 1996, Idaho Bank originated 6,379 small business loans totalling \$492 million. Of those loans, 4,046 totalling approximately \$269 million were in rural areas, and 22 percent of the dollar volume of the bank's small business loans was extended to LMI borrowers. In addition, the bank originated 3,756 small farm loans totalling \$261 million. Of those loans, 3,110 totalling approximately \$211 million were made in LMI areas, and 15 percent of the dollar volume of small farm loans was extended to LMI borrowers.

Branch Locations and Closings

First Bank System does not anticipate any branch closures as a direct result of the proposal because there is no market overlap with U.S. Bancorp. After consummation of the proposal, First Bank System intends to use the branch closing policies and procedures used by U.S. Bancorp's subsidiary banks. The policies require consultation with the community before making any final decision to close a branch or to reduce the services available at a branch in an LMI neighborhood. The OCC recently reviewed the effect of branch closings under the policies in the CRA performance examinations of U.S. Bancorp's subsidiary national banks, and concluded that branch closings during the evaluation period had not adversely affected the ability of the banks to provide banking services to its community, including LMI neighborhoods.^{21/} The Board also notes that Federal banking

^{21/} Some commenters criticized branch closings by First Bank System. The OCC's CRA performance examinations concluded that First Bank System's subsidiary banks provided reasonable access to banking services in all parts of their
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law addresses branch closings by specifically requiring an insured depository institution to provide notice to the appropriate regulatory agency prior to closing a branch.^{22/} Moreover, branch closings by the combined organization may be considered by the Board in future applications.

HMDA Data for First Bank System and U.S. Bancorp

The Board has reviewed the 1994, 1995, and preliminary 1996 data reported by subsidiaries of First Bank System and U.S. Bancorp under the Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*) ("HMDA"). These data reflect some disparities in the rate of loan originations, denials, and applications by racial group. The Board is concerned when the record of an institution indicates such disparities, and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because the data cover only a few categories of housing-related lending. Moreover, HMDA data provide only limited information

^{21/}(...continued)

communities, including LMI areas. As part of the CRA performance examinations of these institutions, examiners reviewed branches closed and did not note any materially adverse effects on LMI neighborhoods or other areas resulting from branch closures.

^{22/} Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (58 Federal Register 49,083 (1993)), requires that a bank provide the public with at least 30 days notice and the primary federal supervisor 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.

about the covered loans.^{23/} HMDA data, therefore, have limitations that make the data an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

In light of the limitations of HMDA data, the Board has carefully reviewed other information, particularly examination reports that provide an on-site evaluation of compliance with fair lending laws by the depository institution subsidiaries of First Bank System and U.S. Bancorp. The CRA examinations of those subsidiaries found no evidence of prohibited discrimination^{24/} and found the banks to be in substantial compliance with antidiscrimination laws and regulations.^{25/}

The record also indicates that First Bank System and U.S. Bancorp have taken a number of affirmative steps to ensure compliance with fair lending laws. For example, First Bank System uses credit scoring in its credit underwriting to help ensure that standards are applied uniformly without regard to race or gender. First Bank System also conducts, or retains third parties to conduct, periodic reviews of underwriting guidelines and procedures, together with comparative file

^{23/} These data, for example, do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income -- reasons most frequently cited by a credit denial -- are not available from HMDA data.

^{24/} In the CRA examinations of the subsidiary national banks of First Bank System and U.S. Bancorp, the OCC sampled a pool of credit applications and performed a comparative analysis designed to detect racial or gender bias. The reviews found no evidence of illegal credit discrimination.

^{25/} The most recent CRA performance examination for U.S. Bank of California, Sacramento, California, conducted by the FDIC, as of May 1994, noted certain violations of fair lending laws, particularly the Equal Credit Opportunity Act. The Board has carefully reviewed the matter in light of all the facts of record, including additional supervisory information about the nature of the violations and the FDIC's conclusion that management promptly implemented comprehensive measures to address the issues.

reviews of similarly situated applicants, to ensure compliance with fair lending laws. Moreover, First Bank System's senior management has developed and implemented extensive written policies, procedures, and training programs to help ensure that its subsidiaries do not illegally discourage or prescreen applicants, and First Bank System regularly assesses those policies, procedures, and programs through internal and external audit reviews to ensure that they are effective. In addition, as part of its continuing evaluation of fair lending practices and procedures, First Bank System has contracted with an outside vendor to evaluate the treatment of prospective applicants throughout its network of bank branches.

U.S. Bancorp also has initiated policies, procedures, and training to ensure that all loan applicants have an equal opportunity to obtain credit. A fair lending policy has been adopted and fair lending training is provided to all employees involved in the lending process. Other initiatives include centralizing underwriting decisions, revising underwriting procedures, adopting an underwriting checklist, and implementing a three-tier review structure for all housing loan applications that are declined. Finally, U.S. Bancorp subsidiaries have conducted a self-assessment program, which includes ongoing quality control review, comparative file reviews, and matched-pair testing.

Comments on the Proposal

As noted, the Board has reviewed the CRA performance records of First Bank System and U.S. Bancorp in light of all the facts of record, including the comments received on the proposed transaction. Some commenters supported the proposal on the basis of the CRA performance records of First Bank System or U.S. Bancorp. Commenters commended First Bank System's community development efforts, including efforts with economic development corporations and inner-city business ventures. Other commenters noted First Bank System's role in establishing or providing financing for affordable housing initiatives.

A number of commenters opposed the proposal.^{26/} Those commenters criticized the records of First Bank System or U.S. Bancorp in assisting to meet credit needs in various states, particularly in minority and LMI communities, in part on the basis of HMDA data. Some commenters maintained that First Bank System's efforts to meet the credit needs of minority borrowers, including Native American borrowers, or the credit and economic development needs of rural areas, small cities, and LMI neighborhoods, were inadequate.^{27/} Other commenters commended the banking and lending services provided by U.S. Bancorp and thought that those services would be adversely affected by the proposal.^{28/} Several commenters

^{26/} During the processing of the applications, the Community Reinvestment Coalition of Oregon ("CRCO") entered into a private agreement with First Bank System that addressed CRA-related issues raised by CRCO and a number of other commenters that concurred in CRCO's comments. Based on this agreement, CRCO supports the proposal. First Bank System also has agreed to designate a senior officer in Portland, Oregon, with the responsibility and the authority to resolve consumer complaints from Oregon residents. In this light, the Oregon Division of Finance and Corporate Securities states that it has no objection to the proposal.

^{27/} Some commenters also maintained that the proposal would result in unemployment in affected communities. The Board notes that the convenience and needs factor has been consistently interpreted by the federal banking agencies, the courts, and Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. In this light, the Board previously has concluded that the effect of a proposed acquisition on employment in a community is not among the factors to be considered under the BHC Act. See Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

^{28/} Those commenters contended that services -- particularly fees charged, interest rates paid, and credit availability -- would be adversely affected by the acquisition of U.S. Bancorp by an out-of-state organization. In the Board's view, an institution's performance should be assessed on the basis of its actual record of helping to meet the credit needs of its entire community. Accordingly, in reviewing the proposal the Board has focused on the CRA performance records of First Bank System's bank subsidiaries, as discussed above. The Board also notes that First

(continued...)

objected to First Bank System's sale of its mortgage subsidiary in 1996 or otherwise criticized the organization's home mortgage lending record. Other commenters criticized the proposal because of the lending and community development record of U.S. Bancorp, based in part on HMDA data.

After carefully reviewing all the facts of record, including the comments received, and for the reasons discussed above, the Board concludes that the CRA performance records of First Bank System and U.S. Bancorp are consistent with approval of the proposal. The Board notes that the record indicates efforts by First Bank System to assist in meeting the credit needs of Native American borrowers and the credit and economic development needs of rural areas. First Bank System and U.S. Bancorp have products and programs in place to meet the credit needs of Native American communities. For example, First Bank System made a \$4.5 million loan to a manufacturing firm on the Flathead Indian Reservation. Examiners found, moreover, no evidence of illegal discrimination against Native Americans or any other racial group. The record also indicates, for example, that in 1996, approximately 50 percent of First Bank System's housing-related loan applications from Montana, North Dakota, and South Dakota came from non-MSA areas, and that the approval rate for those applications was 71 percent.^{29/}

^{28/}(...continued)

Bank System provides a full range of credit products and banking services that assist in meeting the credit and banking needs of LMI individuals, including checking accounts without monthly service charges. Although the Board has recognized that banks help to serve the banking needs of their communities by making basic services available at nominal or no charge, the CRA does not impose any limitation on the fees or other charges that banks may assess for their services.

^{29/} First Bank System also sponsors Federal Home Loan Bank Affordable Housing Program grants through which a financial institution may apply on behalf of
(continued...)

Although First Bank System no longer has a subsidiary mortgage company, it continues to assist in meeting the housing-related credit needs of its communities, including LMI areas.^{30/} First Bank System has expanded its Community Lending Program, which provides housing-related loans to LMI individuals, into seven new markets in Chicago, Illinois; Colorado Springs, Colorado; Fargo, North Dakota; Rochester, Minnesota; Omaha and Lincoln, Nebraska; and Des Moines, Iowa. The program encompasses a broad range of mortgage loan products, including Federal Housing Administration and Veterans Administration mortgage loans, state and local mortgage bond programs, and First Bank System's Home Advantage mortgage product. The Board also notes that the CRA contemplates that a depository institution may choose to focus on addressing particular credit needs of the community consistent with the bank's overall business strategy, and that the CRA does not require a financial institution to provide any specific type of loan product. Moreover, the CRA requires the federal banking agencies to encourage depository institutions to help meet the credit needs of their entire communities, and does not establish a statutory preference for any specific type of credit.^{31/}

^{29/}(...continued)

a nonprofit corporation for a grant to support an affordable housing program. First Bank System has obtained grants from the program to support projects in small communities in Minnesota, Iowa, Nebraska, North Dakota, Montana, and Wyoming.

^{30/} U.S. Bancorp also sold its mortgage subsidiary in 1994. U.S. Bank began to originate loans through its branch structure and its affiliate, U.S. Bancorp Home Loans. U.S. Bank also plans to continue to assist in meeting housing-related credit needs through another nonbank affiliate specializing in community development lending.

^{31/} The Board has considered comments that First Bank System favors urban
(continued...)

Conclusion on Convenience and Needs Considerations

The Board has carefully considered all the facts of record, including the comments received, responses to those comments, and the CRA performance records of the subsidiary depository institutions of First Bank System and U.S. Bancorp, including relevant reports of examination from their primary federal supervisors.^{32/} Based on a review of the entire record, the Board has concluded that convenience and needs considerations, including the CRA records of performance of each organization's subsidiary depository institutions, are consistent with approval of this proposal.^{33/}

^{31/}(...continued)

areas for charitable donations and that philanthropic contributions in Montana, North Dakota, and South Dakota are disproportionately low. Charitable and philanthropic donations are only one aspect of an institution's CRA-related activities, and the CRA does not create a preference for a particular type of charitable donation or grant. As discussed above, moreover, the Board's consideration of First Bank System's CRA performance record has focused on all activities to assist in meeting the credit needs of the community, including lending activities.

^{32/} Commenters contended that First Bank System has unfair hiring practices that disadvantage Native Americans. The Board has determined that its limited jurisdiction to review applications and notices under the specific factors in the BHC Act does not authorize it to adjudicate disputes between a commenter and an applicant that arise under a statute, other than a banking statute, administered and enforced by a federal or state agency (other than a federal or state banking agency) or the courts. In particular, the Board has determined that disputes that arise in the area of employment discrimination are beyond the Board's jurisdiction. The Board also has concluded that the managerial resources of First Bank System are consistent with approving the proposal for the reasons discussed earlier in the order.

^{33/} Commenters have requested that the Board delay action on this case, or condition approval on specified CRA-related requirements. As discussed above, the Board has carefully reviewed the record in this case, and based on all the facts of record has concluded that the record is sufficient to act on the proposal at this

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Nonbanking Activities

First Bank System also has filed notice, pursuant to section 4(c)(8) of the BHC Act, to acquire the nonbanking subsidiaries of U.S. Bancorp and thereby engage in mortgage banking, letter of credit, trust and fiduciary, investment advisory, leasing and equipment financing, community development, and credit-related insurance activities. The Board previously has determined by regulation that each of these activities is closely related to banking within the meaning of section 4(c)(8) of the BHC Act.^{34/} First Bank System proposes to conduct the activities in accordance with Regulation Y and relevant Board interpretations and orders.

In order to approve this proposal, the Board also must determine that the performance of the proposed activities are a proper incident to banking, that is, that the proposed transaction "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."^{35/} As part of its evaluation of these factors, the Board considers the financial and managerial resources of the notificant, its subsidiaries, and any company to be acquired; the effect the transaction would have on such resources; and the management expertise, internal control and risk-management systems, and capital of the entity conducting the activity.^{36/} For the reasons discussed above, and

^{33/}(...continued)

time, and that the record is consistent with approval of the proposal without delay or the specific conditions requested by commenters.

^{34/} See 12 C.F.R 225.28(b)(1),(3),(5),(6), (11), and (12).

^{35/} See 12 U.S.C. § 1843(c)(8).

^{36/} See 12 C.F.R. 225.26.

based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of these notices.

First Bank System has indicated that the proposed transaction would result in operational efficiencies that would allow the combined organization to be a more efficient and effective competitor. The proposal would result in a broader financial network through which First Bank System can serve its customers. Additionally, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies when those investments are consistent, as in this case, with the relevant considerations under the BHC Act, and from permitting banking organizations to allocate their resources in the manner they consider most efficient.

The Board also has carefully considered the competitive effects of the proposed acquisition of U.S. Bancorp's nonbanking subsidiaries. The Board notes that each of the markets for the nonbanking services are unconcentrated, and that there are numerous providers of the services. Consummation of the proposal, therefore, would have a de minimis effect on competition, and the Board has determined that the proposal would not have a significantly adverse effect on competition in any relevant market.

Based on the foregoing and all the other facts of record, the Board has concluded that consummation of the proposal would not result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would not be outweighed by the public benefits of the proposal. Accordingly, based on all the facts of record, the Board has determined that the balance of public benefits that the Board must

consider under the proper incident to banking standard of section 4(c)(8) of the BHC Act is favorable and consistent with approval of the proposal.^{37/}

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. Based on the foregoing and a review of all the facts, the Board has determined that the proposal should be, and hereby is, approved.^{38/} The Board's approval of this proposal is specifically conditioned on compliance by First Bank System with all the commitments made in

^{37/} First Bank System also has given notice of its intention to acquire U.S. World Trade Corporation, an export trading company, which First Bank System proposes to operate in accordance with the Bank Holding Company Act and Regulation K. Accordingly, the Board has determined not to disapprove this notice.

^{38/} Commenters have requested that the Board hold a public hearing or meeting on this 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. In this case, the Board has not received such a recommendation from any state or federal supervisory authority.

Under its rules, the Board also may, in its discretion, hold a public hearing or meeting on an application or notice to clarify factual issues related to the proposal and to provide an opportunity for testimony. See 12 C.F.R. 225.25(a)(2), 262.3(e), and 262.25(d). The Board has carefully considered commenters' requests for a hearing or meeting in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit views, and have, in fact, provided numerous written submissions that have been considered by the Board in acting on this proposal. The requests fail to demonstrate why the written submissions do not adequately present commenters' allegations. After a careful review of all the facts of record, the Board has concluded that the requests fail to identify any genuine dispute about facts that are material to the Board's decision or any other basis on which a hearing or meeting would be warranted. Based on all the facts of record, the Board has determined that a public hearing or meeting is not necessary to clarify the factual record in the proposal, and is not otherwise warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is hereby denied.

connection with this proposal and the conditions referred to in this order. The Board's determination on the proposed nonbanking activities also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y, 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 compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, these commitments and conditions shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision, and, as such, may be enforced in proceedings under applicable law.

The acquisition of U.S. Bancorp's subsidiary banks may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended by the Board or by the Federal Reserve Bank of Minneapolis, acting pursuant to delegated authority.

By order of the Board of Governors,^{39/} effective June 23, 1997.

(signed)

Jennifer J. Johnson
Deputy Secretary of the Board

^{39/} Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and Governors Kelley, Phillips, and Meyer.

APPENDIX A

U.S. Bancorp's Subsidiary Banks

1. U.S. National Bank Of Oregon, Portland, Oregon
2. U.S. Bank of Washington, N.A., Seattle, Washington
3. U.S. Bank of Nevada, Reno, Nevada
4. U.S. Bank of Utah, Salt Lake City, Utah
5. U.S. Bank of Idaho, Boise, Idaho
6. U.S. Bank of California, Sacramento, California
7. First State Bank of Oregon, Canby, Oregon
8. Sun Capital Bank, St. George, Utah
9. Business & Professional Bank, Woodland, California

APPENDIX B

U.S. Bancorp's Nonbanking Activities and Subsidiaries

Mortgage banking and letter of credit activities conducted pursuant to section 225.28(b)(1) of Regulation Y: (1) CBI Mortgage, Modesto, California; and (2) U.S. Trade Services, Inc., Portland, Oregon.

Leasing and equipment financing activities conducted pursuant to section 225.28(b)(3) of Regulation Y: Island Bancorp Leasing, Inc., Alameda, California.

Trust and fiduciary activities conducted pursuant to section 225.28(b)(5) of Regulation Y: (1) West One Trust Company d/b/a U.S. Bank Trust Company, Salt Lake City, Utah; (2) LNB Corp., Alameda, California; and (3) U.S. Bank Trust Company, Portland, Oregon.

Investment advisory services conducted pursuant to section 225.28(b)(6) of Regulation Y: Compass Group, Inc., Spokane, Washington.

Credit-related insurance activities conducted pursuant to section 225.28(b)(11)(i) of Regulation Y: (1) U.S. Bancorp Insurance Agency, Inc.; and (2) West One Life Insurance Company, both in Portland, Oregon.

Community development activities conducted pursuant to section 225.28(b)(12) of Regulation Y through corporations and limited partnerships in Portland, Oregon.

APPENDIX C
CRA Performance Examination Ratings for
First Bank System's Subsidiary Banks

Subsidiary Banks of First Bank System ^{40/}	CRA rating	Date
First Bank National Association Minneapolis, Minnesota	Outstanding	July 18, 1995
Colorado National Bank Denver, Colorado	Outstanding	July 18, 1995
Colorado National Bank Aspen Aspen, Colorado	Satisfactory	July 18, 1995
First Bank National Association Chicago, Illinois	Satisfactory	July 18, 1995
First National Bank of East Grand Forks East Grand Forks, Minnesota	Satisfactory	July 18, 1995
First Bank Montana, N.A. Billings, Montana	Satisfactory	July 18, 1995
First Bank of South Dakota, N.A. Sioux Falls, South Dakota	Satisfactory	July 18, 1995
First Bank National Association Milwaukee, Wisconsin	Satisfactory	July 18, 1995
First Bank, fsb Fargo, North Dakota	Satisfactory	November 6, 1995
First Bank (National Association) Omaha, Nebraska	Satisfactory	November 21, 1994

^{40/} This chart contains the ratings for the subsidiary banks of First Bank System before First Bank System merged or consolidated seven of its subsidiary banks and its subsidiary thrift with and into First Bank.

APPENDIX D
CRA Performance Examination Ratings for
U.S. Bancorp's Subsidiary Banks

U.S. Bancorp's Subsidiary Banks	CRA rating	Date
Business & Professional Bank Woodland, California	Satisfactory	May 1995
U.S. Bank of California Sacramento, California	Satisfactory	May 16, 1994
U.S. Bank of Idaho Boise, Idaho	Satisfactory	March 31, 1994
First State Bank of Oregon Canby, Oregon	No CRA rating ^{41/}	
U.S. National Bank of Oregon Portland, Oregon	Outstanding	April 8, 1997
U.S. Bank of Nevada Reno, Nevada	Outstanding	November 27, 1995
U.S. Bank of Utah Salt Lake City, Utah	Outstanding	May 15, 1995
U.S. Bank of Washington, N.A. Seattle, Washington	Outstanding	April 8, 1997
Sun Capital Bank St. George, Utah	Outstanding	August 2, 1996

^{41/} First State Bank of Oregon, Canby, Oregon, is a special-purpose bank for purposes of the CRA because it does not grant credit to the public in the ordinary course of business. The bank provides only controlled disbursement services for commercial and governmental depositors of other U.S. Bancorp entities, and on this basis the FDIC has concluded that it is not subject to evaluation for CRA performance.