FEDERAL RESERVE SYSTEM

Firstar Corporation
Milwaukee, Wisconsin

U.S. Bancorp
Minneapolis, Minnesota

Order Approving Merger of Bank Holding Companies

Firstar Corporation ("Firstar"), 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 merge with U.S. Bancorp and thereby acquire control of U.S. Bancorp's subsidiary banks, including its lead subsidiary bank, U.S. Bank National Association, Minneapolis, Minnesota ("U.S. Bank").[1] The resulting bank holding company would be named U.S. Bancorp ("New U.S. Bancorp") and have its headquarters also in Minneapolis.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 68,134 (2000)). The time for filing comments has expired, and the Board has considered the proposal

[1] U.S. Bancorp's other subsidiary banks are U.S. Bank National Association ND, Fargo, North Dakota ("U.S. Bank ND"); U.S. Bank National Association MT, Billings, Montana ("U.S. Bank MT"); and U.S. Bank National Association OR, Canby, Oregon ("U.S. Bank OR").

[2] Firstar and U.S. Bancorp also have requested the Board's approval to exercise options to purchase up to 19.9 percent of each other's common stock if certain events occur. These options would expire on consummation of the proposed merger.

and all comments received during the comment period in light of the factors set forth in section 3 of the BHC Act.

Firstar, with total consolidated assets of $74 billion, is the 17th largest commercial banking organization in the United States, controlling approximately 1.4 percent of total banking assets of insured commercial banks in the United States ("total U.S. banking assets").[3] Firstar operates subsidiary banks in Arizona, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin.

U.S. Bancorp, with total consolidated assets of $86 billion, is the 11th largest commercial banking organization in the United States, controlling approximately 1.7 percent of total U.S. banking assets. U.S. Bancorp operates subsidiary banks in 16 western and midwestern states.

On consummation of the proposal and after accounting for the proposed divestitures discussed in this order, New U.S. Bancorp would become the ninth largest commercial banking organization in the United States, with total consolidated assets of $160 billion, representing approximately 3.1 percent of total U.S. banking assets.[4] The combined organization would have a significant presence in the Midwest and Northwest.

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[3] Asset and ranking data are as of June 30, 2000.

[4] Firstar and U.S. Bancorp are financial holding companies that are engaged in various nonbanking activities in the United States and abroad. Firstar intends to acquire the domestic nonbanking operations of U.S. Bancorp in accordance with section 4(k)(4) of the BHC Act and the post-transaction notice procedures of section 225.87 of Regulation Y. Firstar also has informed the Board that it intends to acquire U.S. Bancorp's foreign nonbanking operations in accordance with section 4(c)(13) of the BHC Act and the general consent provisions of section 211.5 of the Board's Regulation K.

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 the bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Firstar is Wisconsin,[5] and the subsidiary banks of U.S. Bancorp are located in California, Colorado, Illinois, Idaho, Iowa, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.[6] The Board has reviewed the interstate banking laws of each state in which Firstar would acquire banking operations and consulted with the appropriate banking regulator in each of those states regarding the permissibility of the proposed transaction under applicable state law.

All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case. Firstar is adequately capitalized and adequately managed, as defined by applicable law.[7] In addition, the subsidiary banks of U.S. Bancorp that Firstar would acquire in an interstate transaction have been in existence for the minimum period of time required by applicable law.[8] On

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[5] A bank holding company's home state is that state in which the total deposits of all banking subsidiaries of the 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).

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

[7] See 12 U.S.C. § 1842(d)(1)(A).

[8] See 12 U.S.C. § 1842(d)(1)(B). With the exception of U.S. Bank ND, which was chartered in 1997 and primarily engages in credit card operations, each subsidiary bank of U.S. Bancorp has been in existence for at least five years and, therefore,

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consummation of the proposal and after accounting for the proposed divestitures, New U.S. Bancorp and its affiliates would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent, or the applicable percentage established by state law, of total deposits in each state in which the insured depository institutions of both Firstar and U.S. Bancorp are located.[9] All other requirements of section 3(d) would be met on consummation of the proposal. Accordingly, based on all the facts of record, the Board is permitted to approve the proposed transaction 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

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may be acquired without regard to any state age requirement. North Dakota law provides that an out-of-state bank holding company may acquire a North Dakota bank if a North Dakota holding company would be permitted to acquire a bank in the acquiring bank holding company's home state under the same circumstances. N.D. Cent. Code § 6-08.3.3-13. Thus, the age requirement provisions of the interstate banking statute of the acquirer's home state, in this case Wisconsin, effectively govern an interstate acquisition of a North Dakota bank. Wisconsin's interstate banking statute allows an out-of-state bank holding company to acquire a bank that has been in existence for fewer than five years, but it requires the acquirer to divest any such bank within two years of the acquisition. Wis. Stat. Ann. § 221.0901. The Commissioner of Banking and Financial Institutions for the State of North Dakota has confirmed that Firstar's proposed acquisition of U.S. Bank ND is consistent with North Dakota's interstate banking provisions if Firstar divests the bank within two years of acquiring U.S. Bancorp. Firstar has committed to divest the bank within that period.

[9] See 12 U.S.C. § 1842(d)(2).

substantially would 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.[10]

Firstar and U.S. Bancorp compete directly in nine local banking markets in four states.[11] 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, including the number of competitors that would remain in the markets, the relative share of total deposits in depository institutions controlled by Firstar and U.S. Bancorp in the markets ("market deposits"),[12] 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 Guidelines ("DOJ Guidelines"),[13] and other characteristics of the markets.

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[10] 12 U.S.C. § 1842(c)(1).

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

[12] Market share data are as of June 30, 1999, and are based on calculations in which the deposits of thrift institutions, which include savings banks and savings associations, are weighted 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 Bulletin 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).

[13] Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market is considered unconcentrated if the post-merger HHI is under 1000, 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

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A. Certain Banking Markets without Divestitures

Consummation of the proposal without divestitures would be consistent with Board precedent and the DOJ Guidelines in eight banking markets.[14] After consummation of the proposal, two of these banking markets would remain unconcentrated and two other banking markets would remain moderately concentrated as measured by the HHI.[15] The remaining four markets without divestitures would be highly concentrated as measured by the HHI, but the increase in the HHI would be within the threshold levels established by the DOJ Guidelines and Board precedent.[16]

B. The Minneapolis-St. Paul, Minnesota Banking Market

Consummation of the proposal without divestitures would exceed the thresholds in the DOJ Guidelines in the Minneapolis-St. Paul banking market. Firstar is the fourth largest competitor in the Minneapolis-St. Paul banking market,

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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.

[14] These markets are Chicago and Rock Island-Davenport, Illinois; Ames, Des Moines, Johnson, and Marengo, Iowa; Omaha-Council Bluffs, Nebraska; and Milwaukee, Wisconsin. The effects of the proposal on the concentration of banking resources in these markets are described in Appendix B.

[15] The unconcentrated markets are Chicago and Marengo, and the moderately concentrated markets are Milwaukee and Rock Island-Davenport.

[16] These markets are Ames, Des Moines, Johnson, and Omaha-Council Bluffs.

controlling deposits of \$1.9 billion, representing 4.7 percent of market deposits.[17] U.S. Bancorp is the largest competitor in the Minneapolis-St. Paul banking market, controlling deposits of \$13.4 billion, representing 32.4 percent of market deposits. To reduce the potential for adverse competitive effects in this banking market, Firstar has committed to divest 11 branches (the "divestiture branches") that account for approximately \$718 million in deposits.[18] Firstar has entered into a sale agreement with an existing competitor in the Minneapolis-St. Paul banking market regarding the divestiture branches.[19] On consummation of the proposal, and after accounting for the divestiture to the proposed purchaser, the combined organization would become the largest competitor in the Minneapolis-St. Paul banking market. New U.S. Bancorp would control deposits of \$14.6 billion,

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[17] Deposit data are as of June 30, 1999, and have been adjusted to reflect subsequent mergers and acquisitions.

[18] Firstar has committed to execute, before consummation of the proposal, a sales agreement for the proposed divestiture with a purchaser determined by the Board to be competitively suitable and to complete the divestiture within 180 days after consummation of the proposal. Firstar further has committed that the divestiture will include at least \$700 million in deposits in the Minneapolis- St. Paul banking market as of the divestiture date. In addition, Firstar has committed that, if it is unsuccessful in completing any divestiture within 180 days of consummation, Firstar will transfer the unsold branch(es) to an independent trustee that is acceptable to the Board and will instruct the trustee to sell the branch(es) promptly to one or more alternative purchasers acceptable to the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

[19] Because of the structure of the Minneapolis-St. Paul banking market, described herein, Firstar has committed that it will not sell any branches to the second largest competitor in the market.

representing approximately 35.4 percent of market deposits,[20] and the HHI would increase by 187 points to 2308.

Although 114 depository institutions compete in the Minneapolis-St. Paul banking market, U.S. Bancorp and Wells Fargo & Company, San Francisco, California ("Wells Fargo"), through their respective predecessor organizations, consistently have led the banking market since at least 1960.[21] The Board previously has recognized the unique structure of the Minneapolis-St. Paul banking market and has indicated that mergers involving one of the two largest depository institutions in the market warrant close review because of the size of these institutions relative to other market competitors. The Board, therefore, has considered whether other factors mitigate the competitive effects of the proposal or

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[20] A commenter expressed concern that the Minneapolis-St. Paul banking market already was highly concentrated and asserted that Firstar's proposed divestitures in that market were inadequate to address competitive concerns. The commenter contended that the merger as structured violated antitrust laws. This commenter also criticized Firstar for omitting the identity of the specific branches to be divested from the public portion of its application, and asserted that this omission impeded his ability to comment on the proposal's competitive effects. The Board has concluded, however, that the public information on the proposed divestitures that Firstar provided, including the structural effects in the Minneapolis-St. Paul banking market, was sufficient for interested persons to evaluate and comment on the competitive effects of the proposal.

[21] See, e.g., Norwest Corporation, 82 Federal Reserve Bulletin 580 (1996); First Bank System, Inc., 79 Federal Reserve Bulletin 50 (1993). Wells Fargo is the second largest competitor in the market, controlling deposits of approximately $13 billion, representing 31.6 percent of market deposits. The third largest competitor controls 6 percent of market deposits, the fifth largest competitor controls 2.2 percent of market deposits, and the remaining competitors each control less than 2 percent of market deposits.

indicate that the proposal would have a significantly adverse effect on competition in the market.[22]

In this case, the Board believes that a number of factors indicate that consummation of the proposed merger is not likely to have a significantly adverse effect on competition in the Minneapolis-St. Paul banking market. With the proposed divestiture of at least $700 million in deposits, the combined relative strength of the two largest competitors in the Minneapolis banking market would not increase significantly.[23] The sizable divestiture proposal also would significantly strengthen the competitive position of the proposed in-market competitor that has agreed to purchase the divestiture branches.[24]

In addition, the record of de novo entry into the Minneapolis-St. Paul banking market in the last five years has been unprecedented when compared with other banking markets nationwide and confirms the attractiveness of the Minneapolis-St. Paul banking market to new entry. Since 1995, 35 depository institutions have entered the market de novo by either chartering a new bank or establishing a new branch in the market. Of these de novo entrants, 11 have

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[22] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the level of and size of the increase in market concentration. See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

[23] The combined market share percentage of the two largest competitors would increase from 64 percent to 67 percent.

[24] The acquirer of the divestiture branches would almost triple its market share and would become the fourth largest competitor in the Minneapolis-St. Paul banking market.

entered the market since June 1999. In addition, 11 depository institutions have expanded their existing branch networks in the market.

Other factors indicate that the Minneapolis-St. Paul banking market remains attractive for entry. From 1990 to 2000, the average increase in population for the Minneapolis-St. Paul Metropolitan Statistical Area ("MSA") exceeded that of both the State of Minnesota and the entire United States.[25] In addition, for each year during that same period, the unemployment rate in the Minneapolis-St. Paul MSA was lower than that of Minnesota and the entire United States. Moreover, for the year that ended on June 30, 1999, the percentage increase in deposits in the Minneapolis-St. Paul MSA was more than three times that of other MSAs in Minnesota and more than four times that of the entire United States.[26]

Based on all the facts of record and for the reasons discussed above, the Board believes that competitive considerations in the Minneapolis-St. Paul banking market are consistent with approval in this case. However, the Board continues to have concerns about the structure of the Minneapolis-St. Paul banking market and believes that future mergers involving either of the two largest competitors in that banking market would warrant special consideration. The Board intends to scrutinize carefully any future acquisition proposal that would increase the market

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[25] The population of the Minneapolis-St. Paul MSA increased by 13.4 percent, compared with an increase of 9.7 percent for the State of Minnesota and 10.9 percent for the entire United States.

[26] Deposits in the Minneapolis-St. Paul MSA increased by 16.9 percent, compared with an increase of 2 percent in the Duluth-Superior MSA, 3.3 percent in the St. Cloud MSA, and 5 percent in the Rochester MSA. Deposits in the entire United States increased by 3.4 percent.

share of one of the two largest competitors in the Minneapolis-St. Paul banking market.

C. Views of Other Agencies and Conclusion

The Department of Justice also has conducted a detailed review of the anticipated competitive effects of the proposal. The Department has advised the Board that, in light of the proposed divestitures, the Department believes that consummation of the proposal likely would not have a significantly adverse effect on competition in any relevant banking market.[27] The Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") have been afforded an opportunity to comment and have not objected to consummation of the proposal.

After carefully reviewing all the facts of record, including public comments on the competitive factors, and for the reasons discussed in this order, the Board has concluded that consummation of the proposal likely would not result in a significantly adverse effect on competition or on the concentration of banking resources in any of the nine banking markets in which Firstar and U.S. Bancorp compete directly or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Factors

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks

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[27] To address concerns expressed by the Department of Justice, Firstar also will divest branches in the Omaha-Council Bluffs banking market. These branches are subject to the divestiture commitments Firstar has made to the Board.

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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 public comments, reports of examination and other confidential supervisory information assessing the financial and managerial resources of the organizations, and other information provided by Firstar and U.S. Bancorp.[28]

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. The Board notes that Firstar, U.S. Bancorp, and each of their subsidiary banks are and on consummation of the proposal would continue to be well capitalized, as defined in the relevant regulations of federal banking agencies. The proposed acquisition is structured as an exchange of shares of Firstar and U.S. Bancorp for shares of New U.S. Bancorp, and neither Firstar nor New U.S. Bancorp would incur any debt as a result of the transaction.[29]

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[28] A commenter asserted that U.S. Bancorp had a poor record of employment and third-party vendor development in the African-American community. The commenter also expressed concern that Firstar lent money to a company that allegedly has a history of employment discrimination on the basis of race. The Board previously has noted that neither the racial composition of management nor the effect of a proposed transaction on employment in a community is among the factors included in the BHC Act. See, e.g., Deutsche Bank AG, 85 Federal Reserve Bulletin 509 (1999) ("Deutsche Bank Order"); Norwest Corporation, 84 Federal Reserve Bulletin 1088 (1998). Although the Board fully supports programs designed to create and stimulate employment opportunities for all members of society, the Board also considers the third-party contracting of U.S. Bancorp to be beyond the scope of the BHC Act, the Community Reinvestment Act, and other relevant banking statutes. See Deutsche Bank Order.

[29] A commenter indicated that the proposed merger was motivated by the personal interests of the senior management officials at Firstar and U.S. Bancorp, rather than by the interests of the shareholders of those companies. The Board notes that

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The Board also has considered the managerial resources of Firstar and U.S. Bancorp and the examination reports of the federal financial supervisory agencies that supervise these organizations, including their subsidiary banks.[30] Firstar, U.S. Bancorp, and their subsidiary banks are well managed, with appropriate risk management systems in place.[31] New U.S. Bancorp would select its senior management from the senior executives of Firstar and U.S. Bancorp, which would provide the combined organization with officers that are experienced and knowledgeable in the operations and markets of both companies.[32] In addition,

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the shareholders of Firstar and U.S. Bancorp have the opportunity to vote on the proposed transaction at the special meetings scheduled for shareholders.

[30] Several commenters criticized Firstar's management for lobbying the Wisconsin legislature to amend the state's bankruptcy laws to give bank liens for secured loans a preference in corporate bankruptcy proceedings over wage claim liens filed by workers. The Board notes that these commenters' contentions do not allege any illegal activity or other action that would affect the safety and soundness of the institutions. This matter also is outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act.

[31] One commenter alleged that inadequate management at U.S. Bancorp was evidenced by the enforcement action of the Securities and Exchange Commission ("SEC") and lawsuits by investors against Piper Capital Management, Inc. ("PCM"), a nonbanking subsidiary of U.S. Bancorp. The violations alleged by the SEC related to PCM's investment advisory activities in connection with a registered investment company and occurred in 1994, before U.S. Bancorp's acquisition of PCM in 1998. U.S. Bancorp has provided detailed information about the steps both PCM and U.S. Bancorp have taken since 1994 to resolve the issues raised by the SEC and investor litigation.

[32] One commenter cited press reports about the loss of personnel at one of Firstar's nonbanking subsidiaries. According to these and other press reports, Firstar has filed lawsuits against certain employees who left this subsidiary, alleging breach of a noncompete clause. In evaluating the managerial factor, the Board has reviewed

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the Board has considered Firstar's recent record of successfully integrating acquired organizations and remaining well managed. Moreover, Firstar and U.S. Bancorp have indicated that they are devoting significant resources to address all aspects of the merger process.

Based on all the facts of record, including confidential reports of examination and other supervisory information, the Board has concluded that considerations relating to the financial and managerial resources of Firstar, U.S. Bancorp, and their respective banking subsidiaries are consistent with approval, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.[33]

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 take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[34] The

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the current managerial resources and future prospects of Firstar's entire organization, including the nonbank subsidiary cited by the commenter.

[33] A commenter cited press reports that U.S. Bancorp had settled claims alleging violations of consumer protection laws related to its arrangement with telemarketing organizations for marketing nonfinancial products to consumers, including a claim brought by the Minnesota Attorney General. Based on these press reports, the commenter asserted that U.S. Bancorp had violated such laws. U.S. Bancorp discontinued the marketing arrangements and customer information sharing practices at issue soon after commencement of the Attorney General's action, settled the various claims, and was not convicted of any offense in connection with the consumer protection law claims. In addition, U.S. Bancorp has implemented various changes to its consumer banking policies and procedures to address heightened concerns over consumer privacy issues.

[34] 12 U.S.C. § 2901 et seq.

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 safe and sound operation, and requires the appropriate federal 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 expansion proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Firstar and U.S. Bancorp in light of all the facts of record, including public comments received on the effect the proposal would have on the communities to be served by the combined organization.

A. Summary of Public Comments

The Board received approximately 209 comments on the proposal. Approximately 193 commenters supported the proposal or commented favorably on Firstar's or U.S. Bancorp's CRA-related activities. Many of these commenters commended Firstar for providing credit or other services to small businesses, sponsoring community development activities, participating in programs that provide affordable housing and mortgage financing for LMI individuals, and providing support to nonprofit organizations. Other commenters related their favorable experiences with specific programs or services offered by Firstar or U.S. Bancorp.

A number of local government agencies involved in community development also commented favorably on their experiences with Firstar and U.S. Bancorp. In addition, a number of private organizations commended Firstar and U.S. Bancorp for supporting the development of affordable housing for low-income individuals and individuals with disabilities through loans, grants, and technical assistance. Other private organizations supported the proposal based on Firstar's and U.S. Bancorp's records of financing community development projects in neighborhoods with predominantly LMI and minority residents, and their records of financing businesses owned by women and minorities ("women-owned businesses" and "minority-owned businesses") directly and through financial intermediaries. Some community-based organizations observed that innovative products and services for LMI communities were developed through partnerships with Firstar and U.S. Bancorp.

Approximately 16 commenters either opposed the proposal, requested that the Board approve the merger subject to conditions suggested by the commenter, or expressed concerns about the records of Firstar, U.S. Bancorp, or both in meeting the convenience and needs of the communities they serve. Some commenters generally asserted that Firstar and U.S. Bancorp had low and declining levels of home mortgage, small business, and small farm lending, particularly to LMI or minority individuals or in predominantly minority communities. Based on data submitted under the Home Mortgage Disclosure Act ("HMDA"), several commenters alleged that Firstar and U.S. Bancorp engaged in disparate treatment of LMI and minority individuals in home mortgage lending.[35] A commenter also criticized the level of participation by Firstar and U.S. Bancorp in government credit enhancement and guaranteed loan programs, particularly in Wisconsin. In addition, commenters expressed concerns that the proposal would result in branch closings, less lending and local decision-making in rural communities, or the termination or reduction of the affordable housing and community development products and programs of Firstar and U.S. Bancorp.

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[35] 12 U.S.C. § 2801 et seq.

Several commenters expressed concern about Firstar's record of home mortgage lending to LMI or minority individuals and in LMI or predominantly minority communities, particularly in Chicago, Illinois; Cleveland, Ohio; St. Louis, Missouri; and Milwaukee, Wisconsin. Some commenters criticized Firstar's level of small business lending in LMI and predominantly minority communities in Chicago. In addition, a commenter alleged that Firstar provides a low level of banking services and reinvestment in LMI communities in Cleveland.[36] Another commenter asserted that Firstar has reduced its banking services and lending to rural LMI individuals and communities, particularly in Wisconsin. A commenter also expressed concerns regarding Firstar's record of closing branches in LMI and predominantly minority communities.[37]

In addition, a commenter criticized U.S. Bancorp's record of home mortgage and small business lending in LMI and predominantly minority communities in Minneapolis. The commenter further expressed concern that U.S. Bancorp's level of community development and affordable housing investments was declining.[38]

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[36] This commenter also asserted that Firstar management has failed to ascertain the financial resources needed in LMI and predominantly minority communities in Cleveland.

[37] Several commenters opposed the proposal based on unfavorable experiences with Firstar in particular loan transactions or business dealings with the organization. The Board has reviewed these comments in light of the facts of record, including information provided by Firstar. The Board has provided copies of these comments to the appropriate federal supervisor of the subsidiary involved for its consideration.

[38] One commenter alleged generally that U.S. Bancorp had a poor record of philanthropy and marketing banking services in the African-American community.

B. CRA Performance Examinations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant 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.[39]

All Firstar's subsidiary banks received either "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance. In particular, Firstar's lead bank, Firstar Bank, National Association, Cincinnati, Ohio ("Firstar Bank"), which now accounts for approximately 93 percent of the total consolidated assets of Firstar, received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of July 1998 ("1998 Firstar Bank Evaluation").[40] All U.S. Bancorp's subsidiary banks also

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[39] See Interagency Questions and Answers Regarding Community Reinvestment, 65 Federal Register 25,088 and 25,107 (2000).

[40] Firstar Bank formerly was named Star Bank, N.A. ("Star Bank"), and was acquired by Firstar in 1998 through a merger with Star Banc Corporation, Cincinnati, Ohio ("SBC"). See Firstar Corporation, 84 Federal Reserve Bulletin 1083 (1998) ("Firstar/SBC Order"). The most recent CRA performance evaluation for Firstar Bank was the evaluation of Star Bank conducted by the OCC before the merger. Firstar adopted SBC's CRA program. See Firstar/SBC Order at 1084. Firstar has engaged in a number of other acquisitions, such as the acquisition of Mercantile Bancorporation, St. Louis, Missouri ("Mercantile"), and recently has merged and renamed various banks under the combined organization. See Firstar Corporation, 85 Federal Reserve Bulletin 738 (1999) ("Firstar/Mercantile Order"). Each of the banks that has been merged into Firstar Bank received at least a "satisfactory" rating at the most recent CRA performance evaluation by its appropriate federal financial supervisory agency. Among these

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received either "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance. In particular, U.S. Bank, which is U.S. Bancorp's lead bank and now represents approximately 94 percent of the total consolidated assets controlled by U.S. Bancorp, received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of April 1998.[41]

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predecessor banks are Firstar Bank Illinois, Chicago, Illinois, which received a "satisfactory" rating from the Federal Reserve Bank of Chicago ("FRB Chicago"), as of June 1998; Mercantile Bank, N.A., St. Louis, Missouri, which received a "satisfactory" rating from the OCC, as of June 1997; Firstar Bank Minnesota, N.A., St. Paul, Minnesota, which received a "satisfactory" rating from the OCC, as of December 1997; Firstar Bank Wisconsin, Madison, Wisconsin, which received an "outstanding" rating from the FRB Chicago, as of April 1997; and Firstar Bank Milwaukee, N.A., Milwaukee, Wisconsin, which received a "satisfactory" rating from the OCC, as of November 1997. The other two current subsidiary banks of Firstar include Firstar Bank Midwest, N.A. (formerly Mercantile Bank, Overland Park, Kansas), which received an "outstanding" rating in its most recent CRA performance evaluation by the OCC, as of September 1998, and Firstar Bank U.S.A., N.A., Waukegan, Illinois ("Firstar USA"), which received a "satisfactory" rating in its most recent CRA performance evaluation by the OCC, as of November 1997.

[41] In 1997, U.S. Bancorp was acquired by First Bank System, Inc., which retained the U.S. Bancorp name, and U.S. Bank was formerly named First Bank National Association. U.S. Bancorp has acquired a number of banks in recent years and has merged and renamed the banks controlled by the combined organization. See First Bank System, Inc., 83 Federal Reserve Bulletin 689 (1997). All the banks that have been merged into U.S. Bank have received at least a "satisfactory" rating at the most recent examinations of their CRA performance by the appropriate federal financial supervisory agency. In addition, U.S. Bank MT (formerly named First Bank Montana, N.A., Billings, Montana), received a "satisfactory" rating from the OCC, as of July 1995. U.S. Bank ND (formerly named First Bank National Association, ND, Fargo, North Dakota), a limited-purpose credit card bank, was chartered on July 31, 1997, and changed its name in March 1998. The OCC has not rated its record of CRA performance to date. U.S. Bancorp's other subsidiary bank, U.S. Bank OR, is a limited-purpose cash management bank that is not subject to the CRA.

Examiners found no evidence of prohibited discrimination or other illegal credit practices at any of the insured depository institutions involved in this proposal and found no violations of substantive provisions of the fair lending laws.[42] Examiners also reviewed the assessment areas delineated by the subsidiary banks of Firstar and U.S. Bancorp and did not report that these assessment areas were unreasonable or arbitrarily excluded LMI areas.

In recent years, Firstar and U.S. Bancorp have acquired other banking organizations and consolidated their subsidiary banks. The most recent CRA performance evaluations of their respective subsidiary banks predate the current structure of the organizations. Therefore, the Board also has evaluated extensive

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[42] One commenter contended that New Century Financial Corporation, Irvine, California ("New Century"), a nondepository mortgage company, is a subsidiary of U.S. Bancorp and that it engages in predatory lending by making subprime loans and imposing prepayment penalties more frequently than its competitors. The commenter also alleged that New Century engages in a higher level of subprime lending to African Americans in certain metropolitan areas than its competitors. U.S. Bancorp has indicated that it currently does not own or control, in the aggregate, 25 percent or more of the shares of New Century, or otherwise control New Century. Consequently, New Century is not a subsidiary of U.S. Bancorp for purposes of the BHC Act. The Board, however, has carefully considered these comments in light of the relationships between New Century and U.S. Bancorp.

The Board has forwarded copies of the comments regarding New Century to the Department of Housing and Urban Development ("HUD"), the Department of Justice, and the Federal Trade Commission, which have responsibility for fair lending law compliance by nondepository companies like New Century. The Board also has consulted with these agencies. In addition, the Board has considered information submitted by U.S. Bancorp on New Century's consumer lending practices, including the processes by which New Century makes credit available to consumers, the compliance procedures established by New Century, the methodology employed by New Century in setting risk-based interest rates, and the relationship of New Century with loan brokers and correspondents.

information submitted by Firstar and U.S. Bancorp about their CRA performance since the dates of their most recent CRA performance evaluations.

C. Firstar's CRA Performance Record

Overview. Examiners commended Firstar Bank for its responsiveness to the credit needs in its assessment areas, particularly the needs of LMI communities and borrowers. Examiners reported that Firstar Bank offered a variety of products and programs to assist in meeting the housing-related credit needs of LMI individuals and communities.

Firstar has implemented its American Dream Home Loan program, which offers portfolio mortgage loan products designed for LMI borrowers that feature more flexible credit requirements, low down payments, and reduced interest rates and fees. Firstar represented that, in 1998 and 1999, it originated $68 million in loans under this program.

Firstar also has participated in a number of government-sponsored home mortgage loan programs. Firstar stated that, in 1999, it originated loans totaling approximately $548.6 million under government mortgage programs, such as those sponsored by the Federal Housing Authority ("FHA") and the Veterans Administration ("VA"). From January through September 2000, Firstar reportedly made loans totaling more than $372 million under these programs. Firstar stated that it also provided $83 million in loans under programs sponsored by the Federal National Mortgage Association ("FNMA"), the Federal Home Mortgage Corporation ("FHMC"), and HUD, between January 1998 and September 2000.

Examiners generally commended the distribution of Firstar Bank's small businesses lending.[43] Firstar reported that, from January 1998 through 2000, it made small business loans nationwide totaling more than $5.4 billion, including more than $110 million in loans sponsored by the Small Business Administration ("SBA") and more than $46.6 million in loans sponsored by the Farm Service Agency ("FSA").[44]

In addition, Firstar noted that, in 1998, it introduced a five-year lending initiative (the "Star Bank Initiative"), through which it intends to provide $5.5 billion for mortgage loans to LMI individuals and for small business and small farm loans in LMI areas of Ohio and Kentucky. Firstar represented that, since introducing the initiative, it has lent $3.6 billion, including approximately $161 million in small business loans to businesses in LMI census tracts.

Examiners commended Firstar Bank for the amount of community development loans that the bank and its affiliates had originated. Examiners also determined that Firstar Bank's qualified community development investments generally showed good responsiveness to the community development needs of its assessment areas.[45]

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[43] For example, examiners reported that the bank's geographic distribution of small loans to businesses in the low-income communities in its Cincinnati assessment areas was excellent.

[44] In this context, "small business loans" means loans with an original principal amount of less than $1 million to businesses.

[45] For example, during 1996 and 1997, Firstar Bank originated 16 community development loans, totaling $17.9 million in the Cincinnati MSA, most of which were dedicated to housing for LMI individuals and families. During this time period, Firstar also made qualified community development investments totaling $8.3 million in this area.

Firstar represented that, since its latest CRA evaluations, it has maintained a high level of community development activity in the communities it serves, participated in a number of loan pools and equity funds to finance affordable housing and small business development, and provided financial support to organizations that engage in such activities. For example, Firstar stated that, in 1999, it originated more than $300 million in community development loans throughout its assessment areas. Firstar also represented that, during the first six months of 2000, it made qualified community development investments totaling more than $165 million, including more than $120 million that were eligible for low-income housing tax credits.

Examiners found that Firstar Bank provided a good level of banking services in its assessment areas and that the bank's delivery systems were accessible to all portions of its assessment areas, including LMI areas. In addition, the Department of the Treasury advised Firstar that, as of October 2000, Firstar Bank was the largest institution in the United States to implement successfully the Electronic Transfer Account for recipients of federal government payments at all its branch locations.

Chicago, Illinois. Firstar Bank Illinois, Chicago, Illinois ("Firstar IL"), which was merged into Firstar Bank in May 1999, received a "satisfactory" rating in its last CRA performance evaluation by the FRB Chicago, as of June 1998.[46] Examiners reported that Firstar IL demonstrated a strong overall

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[46] Before that merger, Firstar IL served the Chicago MSA. Firstar USA, a limited-purpose bank primarily engaged in retail consumer lending, also is in the Chicago MSA. As noted, Firstar USA received a "satisfactory" rating in its most recent CRA performance evaluation by the OCC, as of November 1997. Examiners noted that Firstar USA adequately provided qualified community

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level of lending to LMI individuals and in LMI areas.[47] Although noting that the bank's level of HMDA-reportable lending in LMI census tracts in 1997 was lower than that of lenders in the aggregate, examiners found that 20 percent of Firstar IL's HMDA-reportable loans in LMI census tracts were in low-income census tracts, compared with 10 percent of the HMDA-reportable loans by lenders in the aggregate.

In 1999, Firstar Bank and Firstar USA originated HMDA-reportable loans totaling more than $73 million to LMI borrowers in the Chicago MSA, including more than $13 million in loans to low-income borrowers. Firstar stated that its home mortgage lending to LMI individuals in the Chicago MSA, from January 1998 through 2000, included approximately $2.5 million under its American Dream Home Loan program and approximately $7.3 million through FNMA and FHMC loan programs.

Examiners determined that Firstar Bank was responsive to the borrowing needs of small businesses in its Chicago assessment areas. In addition, examiners found that Firstar IL's level of small business lending in LMI census tracts in its assessment areas had improved during the evaluation period and

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development investments, services, and loans in its assessment area, which included 14 LMI census tracts out of a total of 32 census tracts.

[47] A commenter alleged that Firstar has arbitrarily defined its CRA assessment area in Chicago to exclude LMI communities. Although a bank's assessment area delineation is not a separate criterion for CRA performance, examiners review whether an institution's assessment area meets regulatory requirements, including whether it arbitrarily excludes LMI areas. In the 1998 CRA performance evaluation of Firstar IL, examiners reviewed the bank's assessment area delineation and concluded that the assessment area for Firstar IL complied with applicable regulatory requirements. Firstar Bank recently expanded its assessment area in Chicago to include six counties in their entirety in the Chicago MSA.

generally was comparable with aggregate lending levels in 1997. Firstar stated that it originated more than 4,600 small business loans, totaling $513 million, in the Chicago MSA during 1998 through 2000. This included more than $48 million in small business loans in LMI census tracts in the Chicago MSA.

Examiners noted that, during the evaluation period of the 1998 performance examination, Firstar IL actively sought opportunities throughout the Chicago MSA to lend in support of community development. From January 1996 through June 1998, Firstar IL originated 21 community development loans totaling approximately $15 million. Of this amount, approximately $8 million supported the development of affordable housing for LMI individuals and approximately $6 million supported economic development activities to help revitalize or stabilize LMI census tracts. Examiners also commended the community development investments of Firstar IL in Chicago, noting that Firstar IL made community development investments totaling approximately $1.4 million from January 1996 through June 1998.

Firstar has continued its active involvement in community development in the Chicago area. For example, Firstar stated that since 1997 it has provided more than $3.7 million in loans to organizations that provide multifamily affordable rental units and has invested more than $500,000 in a Chicago neighborhood housing organization that provides affordable housing opportunities to LMI families. In addition, Firstar has made a $1 million equity investment in a minority-owned community bank and has made significant deposits in a credit union that serves a low-income neighborhood.

Cleveland, Ohio. Examiners evaluated Firstar Bank's CRA performance record in the Cleveland-Lorain-Elyria MSA ("Cleveland MSA"), as part of the 1998 Firstar Bank Evaluation. Examiners found that Firstar Bank's lending performance was excellent in the Cleveland MSA, the bank's largest market in Ohio. In particular, examiners commended Firstar Bank for its home-purchase and small business lending performance in the Cleveland MSA, especially for its distribution of home loans in LMI census tracts and high level of lending to LMI individuals.

From January 1996 through December 1997, Firstar Bank originated 37 percent of its home-purchase loans in the Cleveland MSA in LMI census tracts, which was significantly higher than the percentage of owner-occupied housing units in LMI census tracts. Similarly, examiners noted that Firstar Bank's origination of 40 percent of its home-purchase loans in the Cleveland MSA to LMI borrowers compared favorably with the percentage of LMI families in the general population of the Cleveland MSA.

Since the 1998 performance evaluation, Firstar has used its various lending programs to increase its level of lending to LMI borrowers and in LMI communities. In 1999, Firstar Bank originated HMDA-reportable loans totaling more than $39 million to LMI borrowers in the Cleveland MSA, including more than $13 million in loans to low-income borrowers. Firstar reported that, in 1999 and 2000, the dollar amount of home mortgage loans it originated under its American Dream Home Loan program in the Cleveland MSA included $3.3 million to borrowers in LMI census tracts and $6.9 million to LMI borrowers. In addition, Firstar represented that, from January 1998 through 2000, it provided a total of more than $70 million HMDA-reportable loans to LMI individuals in the Cleveland MSA through its Star Bank Initiative.

In the 1998 Firstar Bank Evaluation, examiners also commended Firstar Bank for its distribution of small businesses loans in LMI census tracts in the Cleveland MSA. In 1997, Firstar Bank originated 18 percent of its small business loans in the Cleveland MSA to businesses in LMI census tracts.

Since the 1998 Firstar Bank evaluation, Firstar has continued its efforts in making small business loans to businesses in LMI census tracts in the Cleveland MSA. Firstar stated that, from January 1998 through 2000, it provided more than $266 million in small business loans in the Cleveland MSA. Approximately 20 percent of this amount, measured by number and dollar amount, was made to businesses in LMI census tracts. Firstar also reported that it provided small business loans totaling $1.3 million under SBA-sponsored loan programs in the Cleveland area in 1999, and that this amount increased to $27 million in 2000.

Examiners noted that Firstar Bank provided adequate levels of community development lending in the Cleveland MSA and commended the bank for its responsiveness to community development needs through its investment activity, which totaled approximately $2.4 million in 1997. Since the 1998 Firstar Bank Evaluation, Firstar has expanded its community development programs. Firstar stated that, as part of the Star Bank Initiative, it provided more than $27 million in community development loans and more than $874,000 in grants to organizations involved in community development activities in the Cleveland MSA during 1998, 1999, and 2000.

In the 1998 First Bank Evaluation, examiners also determined that Firstar Bank provided a good level of services in the Cleveland MSA, including in LMI communities, and that the bank's delivery systems were conveniently located and accessible to all portions of the bank's assessment area. Examiners also commended the bank's variety of services, including its branch and full-service ATM network and its 24-hour telephone banking, bank-by-mail, and Internet banking services. In particular, examiners noted that 16 percent of the bank's branches were in LMI areas and that the bank augmented the availability of branches through the accessibility of its ATMs in LMI areas. Examiners also found that, during the evaluation period, Firstar Bank's record of opening and closing branches in the Cleveland MSA resulted in increased services in LMI areas and to LMI individuals.

St. Louis, Missouri. The predecessor of Firstar Bank in the St. Louis, Missouri-Illinois MSA ("St. Louis MSA") was Mercantile Bank National Association, St. Louis, Missouri ("Mercantile Bank"), which Firstar acquired in 1999.[48] As previously noted, Mercantile Bank received a "satisfactory" rating in its most recent CRA performance evaluation by the OCC, as of June 1997. In particular, examiners commended Mercantile Bank for its very good distribution of HMDA-reportable loans and small business loans among borrowers of different income levels.

Examiners determined that Mercantile Bank's volume of HMDA-reportable loans reflected a good responsiveness to area credit needs. In 1995 and 1996, Mercantile Bank originated or purchased more than $943 million in HMDA-reportable loans, of which 26 percent were made to LMI borrowers. Examiners noted that Mercantile Bank's distribution of government-sponsored home-purchase loans to LMI borrowers represented 43 percent of all such loans it made in 1996 and exceeded the percentage of LMI families in the general population of the St. Louis MSA.

Since its acquisition of Mercantile Bank, Firstar has continued a high level of home mortgage lending to LMI borrowers in the St. Louis MSA. Firstar stated that, in 1999, it originated or purchased more than 2,500 HMDA-reportable loans to LMI borrowers, totaling approximately $91.8 million. During the first 10 months of 2000, Firstar reported that it originated or purchased

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[48] Firstar acquired Mercantile Bank in 1999 through a merger with Mercantile Bancorporation and renamed the bank Firstar Missouri, N.A. In 2000, Firstar merged the bank into Firstar Bank. See Firstar/Mercantile Order.

HMDA-reportable loans to LMI borrowers in the St. Louis MSA, totaling $89.8 million. Firstar also reported that, since Firstar's acquisition of Mercantile, it has lent $2.7 million to borrowers in LMI census tracts and $2.4 million to minority borrowers in the St. Louis MSA through its American Dream Home Loan program. Under its Open Doors program, a home mortgage program designed for LMI borrowers that Mercantile Bank introduced in the St. Louis area, Firstar Bank reported that it has lent $5.9 million to borrowers in LMI census tracts, $2.2 million to borrowers in predominantly minority census tracts, and $13 million to minority borrowers.

In 1999, Firstar announced the St. Louis Loan Initiative, a five-year $7.6 billion lending program in the St. Louis MSA to provide home mortgage loans to LMI individuals and in LMI communities and small business loans to businesses in LMI areas.[49] Firstar represented that, through November 2000, it has lent more than $1.7 billion in connection with its St. Louis Loan Initiative, including $91 million in HMDA-reportable loans to LMI individuals, $23 million in HMDA-reportable loans to borrowers in LMI census tracts, and $129 million in small business loans.[50]

Examiners commended Mercantile Bank for its level of community development lending, which totaled $7.9 million from May 1995 through June 1997. These loans financed the construction and rehabilitation of affordable housing for LMI families, promoted economic development through financing a construction loan for a business that primarily serves LMI individuals, and helped fund nonprofit organizations that provide community services for LMI families.

Firstar has continued to provide a significant level of community development lending. For example, in 1999 and 2000, Firstar Bank provided approximately $4.5 million in loans to a developer to construct low-income housing in St. Louis, and a loan of more than $5.4 million to a not-for-profit organization to develop affordable, low-income rental housing in St. Louis. In addition, Firstar reported that it has made low-income housing tax credit investments exceeding $27 million in the St. Louis MSA since January 1998.

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[49] In 2000, Firstar also announced that this initiative would include at least $10 million in mortgage loans and $10 million in small business loans each year for five years in the LMI neighborhoods of North St. Louis.

[50] Firstar stated that approximately $7.5 million of the small business loans were made to businesses in LMI census tracts in North St. Louis.

Milwaukee, Wisconsin. Before its merger into Firstar Bank in October 1999, Firstar Bank Milwaukee, National Association, Milwaukee, Wisconsin ("Firstar Milwaukee"), was Firstar's largest subsidiary bank in Wisconsin. Firstar Milwaukee received a "satisfactory" rating in its last CRA performance evaluation by the OCC, as of November 1997. Examiners found that Firstar Milwaukee was responsive to the credit needs of all segments of its service community. In particular, examiners commended the bank for the level of its home mortgage and home improvement lending in LMI census tracts. Examiners also commended Firstar Milwaukee for making 38 percent of its consumer loans to LMI borrowers in 1996, a level that exceeded the percentage of LMI borrowers in the general population of the bank's assessment area.

Since that performance evaluation, Firstar has continued to strengthen its record of providing credit to LMI borrowers and in LMI communities. In 1999, Firstar originated HMDA-reportable loans totaling approximately $52 million to LMI borrowers in the Milwaukee MSA, including more than $12 million in loans to low-income borrowers. Firstar reported that it also increased its level of home-purchase lending in LMI census tracts by approximately 40 percent during the last three years. Many of these home-purchase loans were made through Firstar's American Dream Home Loan program. In 1999, Firstar reportedly made housing-related loans through this program in the Milwaukee, Wisconsin MSA ("Milwaukee MSA"), totaling $3.5 million to borrowers in LMI census tracts, $5.8 million to LMI individuals, and $4.4 million to minority borrowers.[51] Firstar

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[51] Firstar stated that, in 1999, its housing-related lending in Wisconsin (including the Milwaukee MSA) under the American Dream Home Loan program included $3.5 million in loans to borrowers in LMI census tracts, $6.5 million in loans to LMI individuals, and $4.6 million in loans to minority borrowers.

stated that, in 2000, its housing-related lending under this program included $6.3 million in loans to borrowers in LMI census tracts, $9.1 million in loans to LMI individuals, and $9.5 million in loans to minority borrowers.[52]

Examiners commended Firstar Milwaukee for its lending to small businesses, including those in LMI census tracts. Examiners noted that Firstar Milwaukee had introduced a small business line-of-credit program designed for emerging small businesses trying to build a credit history, and had originated small business credit lines totaling more than $3.5 million under this program.

Firstar stated that its small business lending activity in the Milwaukee MSA has remained strong since the evaluation. For example, Firstar reported that, in 1998, Firstar Milwaukee originated small business loans totaling $81.2 million. Firstar also stated that 17.5 percent of these small business loans were made to businesses in LMI census tracts compared with 12.5 percent of the small business loans made by lenders in the aggregate. In 1999, Firstar made small business loans totaling approximately $38 million to businesses in LMI census tracts, including more than $16 million in small business loans to businesses in low-income census tracts.

State of Wisconsin. Firstar Bank Wisconsin, Madison, Wisconsin (“Firstar WI”), which was merged into Firstar Bank in September 1999, received an “outstanding” rating in its last CRA performance evaluation by the FRB Chicago, as of April 1997. The examiners commended Firstar WI’s responsiveness to the credit needs of LMI individuals and communities and

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[52] Firstar reported that its housing-related lending throughout Wisconsin during 2000 included $7.8 million in loans to borrowers in LMI census tracts, $13.5 million in loans to LMI borrowers, and $11.8 million in loans to minority borrowers.

favorably characterized the distribution of the bank's housing-related loans to LMI borrowers and in LMI census tracts. For example, examiners found that the bank and its affiliates made approximately 21 percent of their housing-related loans to LMI borrowers and more than 10 percent of their housing-related loans to borrowers in LMI census tracts.[53]

Firstar represented that it has maintained a strong record of lending to LMI borrowers and in LMI communities. In particular, Firstar stated that it has continued to provide a high level of home-purchase financing and other HMDA-reportable lending in its rural assessment areas in Wisconsin and that the dollar amount of home-purchase loans to LMI individuals and in LMI communities in its rural assessment areas has increased each year since 1998.[54]

The CRA performance evaluation of Firstar WI found that the bank had a strong record of small business and small farm lending in Wisconsin. Examiners noted that, in 1996, Firstar WI made more than 3,600 small business loans and originated more than 230 small farm loans. Examiners stated that approximately 500 of these small business and farm loans, totaling approximately $42 million, were made in LMI areas. Firstar reported that, in 1998, Firstar WI

[53] Firstar stated that 10 percent of its home mortgage loans in 1997, and 9 percent of its home mortgage loans in 1998, were made to borrowers in LMI census tracts, which generally was consistent with the percentage of home mortgage loans made by lenders in the aggregate to borrowers in LMI census tracts.

[54] Firstar reported that it provided $6.5 million in home-purchase lending to borrowers in LMI census tracts and $13.3 million to LMI individuals in 1998. By 2000, Firstar's lending level had increased to $8.8 million in loans to borrowers in LMI census tracts and $15.4 million in loans to LMI individuals in its rural assessment areas in Wisconsin.

originated small business loans in amounts of $100,000 or less, totaling $83.5 million, in Wisconsin.

In addition, the CRA performance evaluation concluded that Firstar WI offered a variety of governmentally insured, guaranteed, and subsidized loans to small businesses, small farms, and LMI borrowers. For example, examiners noted that, in 1996, Firstar WI originated SBA loans totaling $35.4 million and FSA loans totaling $11.7 million. Examiners also commended the bank for participating in a HUD lending program that offered nontraditional mortgage loans on real property located on the Lac Courte Oreille Reservation where conventional mortgage lending was difficult because of certain issues related to perfecting liens on real property.

Firstar stated that, since the CRA performance evaluation, Firstar Bank has continued to participate actively in various government-sponsored loan programs. For example, Firstar reported that it made SBA loans totaling $21.7 million in Wisconsin (excluding the Milwaukee MSA) in 1998 and 1999. Firstar also represented that Firstar Bank has continued to participate in various lending programs operated by the Wisconsin Housing and Economic Development Authority ("WHEDA"). Firstar reported that it originated housing-related and farm loans under WHEDA programs that totaled $7.6 million in 1998, $5.2 million in 1999, and $7.8 million in 2000.[55]

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[55] One commenter disagreed with the examiners' conclusions that Firstar WI had a strong record of small farm lending, and expressed concern about Firstar's commitment to small farm lending in Wisconsin, particularly to LMI borrowers or to small farms in LMI communities. The commenter also expressed concern about Firstar's participation in government-sponsored programs like the WHEDA or the FSA programs. The number of small farm loans originated by Firstar and its subsidiaries in Wisconsin decreased by 43 percent from 1997 to 1998 and decreased by approximately 8 percent from 1998 to 1999. Although Firstar's level

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D. U.S. Bancorp's CRA Performance Record

Overview. As noted previously, U.S. Bancorp's lead bank subsidiary, U.S. Bank (formerly First Bank, National Association) received a "satisfactory" rating in its most recent CRA performance evaluation by the OCC, as of April 1998. In addition, the lead subsidiary bank of U.S. Bancorp before the merger with First Bank System, United States National Bank of Oregon, Portland, Oregon ("U.S. National Bank"), received an "outstanding" rating in its most recent CRA performance evaluation by the OCC, as of April 1997. The combined organization adopted First Bank System's affordable housing loan program and U.S. Bancorp's small business lending program. As noted above, the Board also has carefully reviewed data on the lending activities of U.S. Bancorp's subsidiary banks after the examination.

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of small farm lending has declined somewhat in Wisconsin, Firstar has continued its high level of distribution of small farm loans in LMI areas. Firstar reported that, in 1998, it originated small farm loans in Wisconsin, totaling approximately $11.4 million. In 1998, 64 percent of Firstar's small farm loans in Wisconsin were made to borrowers in LMI census tracts. Similarly, 62.7 percent of Firstar's small farm loans in Wisconsin in 1999 were made to borrowers in LMI census tracts. In 2000, Firstar made small farm loans totaling at least $5.9 million in LMI census tracts in Wisconsin.

Firstar represented that it continues to be committed to agricultural lending in Wisconsin and to programs sponsored by WHEDA and the FSA. For example, Firstar stated that it increased its level of originations under the WHEDA farm program by approximately 450 percent from 1999 to 2000. It also participated in a number of FSA programs in 2000. According to Firstar, it was the fourth largest agricultural lender in the United States in 1999, with total agricultural loan originations of more than $1 billion. Firstar stated that it continues to employ local relationship managers with expertise in agricultural lending who are available to process the most difficult agricultural credits. Firstar added that it has implemented a simplified small loan agricultural policy, featuring a streamlined application process for loans under $100,000.

Examiners commented favorably on U.S. Bank's responsiveness to community lending needs and its distribution of loans, particularly in LMI communities and to LMI individuals.[56] Examiners noted that U.S. Bank demonstrated excellent distribution of HMDA-reportable loans in LMI geographies. For example, in six of U.S. Bank's nine markets, U.S. Bank's percentage of loans made to borrowers in LMI census tracts exceeded 80 percent of the percentage of owner-occupied units in those census tracts. In 1996, U.S. Bank made almost 16,000 HMDA-reportable loans nationwide, of which 15 percent were made to LMI borrowers and 23 percent were made to borrowers in LMI communities.

Examiners found that U.S. Bank originated or participated in a number of flexible lending programs. For example, the bank's Home Advantage Mortgage program provides a mortgage loan to LMI borrowers with a reduced interest rate and includes funds for down payment assistance and financing for any property rehabilitation that may be needed. In 1995 and 1996, U.S. Bank and its affiliates made Home Advantage Mortgage loans totaling more than $41 million. Examiners also noted that U.S. Bank participated in a number of home lending programs sponsored by state housing and finance agencies, such as the Colorado Housing and Finance Authority ("CHFA") and the Nebraska Investment Finance Authority ("NIFA").[57]

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[56] Examiners especially commended U.S. Bank for its CRA lending performance in Chicago, Illinois, and Denver, Colorado.

[57] The CHFA and NIFA programs offer mortgage loans with below-market interest rates to LMI first-time homebuyers. Under these programs, U.S. Bank provided loans totaling almost $3.5 million in 1996. Examiners also noted the participation of U.S. National Bank in the Oregon State Bond Mortgage Loan

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Since the CRA performance evaluations of U.S. Bank and U.S. National Bank, U.S. Bank has continued to offer the Home Advantage loans and has adopted U.S. National Bank's flexible home lending program, Home Partners. This program for LMI borrowers incorporates flexible underwriting guidelines and down payments as low as 1 percent, without requiring private mortgage insurance. U.S. Bank's level of lending under these programs has increased in each of the last three years. U.S. Bancorp stated that, in 1999, it originated loans under these programs totaling $81.9 million and that, in 2000, it increased the total amount lent to more than $87 million.

Examiners of U.S. National Bank commended the bank for responding aggressively to the needs of small businesses and participating in innovative small business loan programs. U.S. National Bank developed the Commercial Opportunity Loan Program to provide financing to women-owned and minority-owned businesses and to businesses in economically distressed areas. The program provides flexible underwriting and collateral requirements. Examiners noted that, from 1994 through 1996, U.S. National Bank originated loans totaling $24 million under this program and originated SBA loans totaling $31 million. Examiners further commended U.S. National Bank for its excellent distribution of small business loans in LMI areas. In 1996, U.S. National Bank extended 22.4 percent of the total number and 25.8 percent of the total dollar amount of its small business loans to businesses in LMI census tracts. Examiners also reported that U.S. Bancorp's distribution of small business and small farm loans based on annual revenues was good.

Program and found that, from 1994 through 1996, U.S. National Bank originated loans totaling $19 million under this program.

Since the CRA performance evaluations, U.S. Bancorp has continued to provide a large number of small business loans to businesses in LMI areas.[58] U.S. Bancorp stated that, from January 1998 through October 2000, it provided more than 31,000 small business loans, totaling more than $2 billion, to businesses in LMI areas nationwide.[59]

Examiners commended U.S. National Bank for its commitment to community development activities and determined that U.S. Bank had an adequate level of community development loans and investments. Examiners noted that, from 1994 through 1996, U.S. National Bank made community development loans and investments totaling more than $143 million. During the same time period, examiners reported that U.S. Bank made approximately $92.6 million in community development loans.

U.S. Bancorp has increased its community development lending and investment activity since the CRA performance evaluations. U.S. Bancorp stated that, from January 1998 through October 2000, U.S. Bank and U.S. Bank MT made more than $526 million in CRA community development loans that facilitated the development of new affordable housing units. During this same period, U.S. Bancorp and its subsidiaries reportedly made qualified community

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[58] A commenter criticized U.S. Bancorp's volume of farm lending. U.S. Bancorp stated that it engaged in minimal farm lending, particularly outside certain northwestern states. Although the Board has recognized that banks help to serve the banking needs of communities by making a variety of products and services available, the CRA does not require an institution to provide any specific types of products and services, such as farm loans, in its assessment area.

[59] This represents 22.6 percent of the total number and 28.2 percent of the total dollar amount of U.S. Bancorp's small business loans.

development investments totaling more than $305 million, including more than $217 million in low-income housing tax credits.[60]

Minneapolis, Minnesota. Examiners commended U.S. Bank's lending performance in the Minneapolis MSA, noting that the geographic distribution of its HMDA-reportable loans was excellent. Since its CRA performance evaluation, U.S. Bank has continued to provide significant levels of home mortgage lending in LMI communities in the Minneapolis MSA. U.S. Bancorp reported that, from January 1999 through October 2000, U.S. Bank originated approximately $64 million in HMDA-reportable loans to borrowers in LMI communities in the Minneapolis MSA, including $9.8 million in loans under its Home Advantage and Home Partnership programs and approximately $10.5 million in loans sponsored by the FHA and the VA.

Examiners noted that U.S. Bank's distribution of its small business and small farm loans to borrowers of different revenue levels was good, and that its level of small business and small farm lending in LMI census tracts was adequate. In 1996, U.S. Bank provided 14 percent of its small business loans in the Minneapolis MSA to business in LMI census tracts. U.S. Bancorp reported that, from January 1998 through October 2000, U.S. Bank provided more than $149 million in small business loans to businesses in LMI census tracts in the

[60] U.S. Bancorp reported that its subsidiary, U.S. Affordable Housing Community Development Corporation ("U.S. Affordable Housing CDC"), has facilitated the development of more than 5,000 affordable housing units and currently has low-income tax-credit equity investment commitments of more than $370 million. Another subsidiary, U.S. Bancorp Community Development Corporation, has invested more than $21 million in various small business and economic development efforts since 1985. U.S. Bancorp also reported that, during 1999 and 2000, it made investments of more than $13.3 million in mortgage-backed securities that support affordable housing for LMI individuals and communities.

Minneapolis MSA, representing 15.8 percent of its total small business lending in the Minneapolis MSA.

Examiners noted that, in the Minneapolis MSA during 1995 and 1996, U.S. Bank made $32 million in community development loans and $11.3 million in qualified community development investments. These community development activities included a revolving $4 million loan to a community development corporation that constructs and rehabilitates owner-occupied, single-family residences for LMI families, and investments of more than $7 million in programs designed to provide affordable housing for LMI individuals and communities.

U.S. Bancorp represented that, from January 1998 through October 2000, U.S. Bank made approximately $50.1 million in community development loans in the Minneapolis MSA, which facilitated the development of more than 1,700 new affordable housing units. During this time period, U.S. Bank also reportedly made $40 million in qualified community development investments, including investments in a project designed to provide living-wage jobs to residents of a North Minneapolis LMI neighborhood and in an organization that provides venture capital to minority-owned businesses in Minnesota.

State of Wisconsin. Examiners noted that U.S. Bank's geographic distribution of HMDA-reportable loans and small business and small farm loans in Wisconsin was excellent. In 1996, 22 percent of U.S. Bank's HMDA-reportable loans in Wisconsin were made in LMI census tracts. This compared favorably to the 15 percent of owner-occupied units in Wisconsin that were located in LMI census tracts. In 1996, U.S. Bank made 25 percent of its HMDA-reportable loans in Wisconsin to LMI individuals.[61]

U.S. Bancorp represented that, from January 1998 through October 2000, U.S. Bank lent approximately $6.2 million through its Home Advantage and Home Partnership loan programs. During this time period, U.S. Bank also made other HMDA-reportable loans totaling approximately $10.2 million to borrowers in LMI census tracts in Wisconsin.

Examiners noted that U.S. Bank adequately responded to community needs in Wisconsin through its community development loans and its significant level of qualified community development investments. In 1995 and 1996, U.S. Bank made 10 community development loans in Wisconsin totaling approximately $4.5 million, including approximately $1.5 million in loans to a Milwaukee-based organization that focuses on providing social and human services to LMI women. In 1995 and 1996, U.S. Bank made approximately $1.9 million in qualified community development investments in Wisconsin.

U.S. Bancorp stated that, from January 1998 through October 2000, U.S. Bank made community development loans totaling $2.9 million that financed the development of almost 500 affordable housing units in LMI communities in Wisconsin. During the same time period, U.S. Bank reportedly made $3.9 million in qualified community development investments in Wisconsin.

E. HMDA Data

The Board also has considered the records of Firstar and U.S. Bancorp in light of comments on HMDA data reported by their subsidiaries.[62] Data for

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[61] In particular, examiners noted that, in 1996, U.S. Bank made 10 percent of its HMDA-reportable loans in Wisconsin to low-income individuals, compared with 6 percent by lenders in the aggregate.

1998 and 1999 indicate that Firstar's HMDA lending volume decreased in 1999. However, this same pattern was evident for lenders in the aggregate, reflecting the decline in home mortgage loan demand during a period of rising interest rates. The data show that some categories of Firstar's housing-related lending to LMI and minority borrowers and in LMI and predominantly minority communities were below the lending levels of HMDA-reporting lenders in the aggregate in some of Firstar's CRA assessment areas, while in others it exceeded the lending levels of those lenders. For instance, during 1999 Firstar originated a lower percentage of HMDA-reportable loans in LMI census tracts and to LMI individuals in its Chicago assessment areas, while in its Cleveland assessment area Firstar's percentage of HMDA-reportable loans exceeded that of lenders in the aggregate in these respects. Firstar's percentage of HMDA-reportable loans to African-American applicants and to borrowers in predominantly minority census tracts in its Nashville assessment area lagged the percentage for lenders in the aggregate in 1999, while Firstar's percentage of home mortgage originations to African Americans and to borrowers in predominantly minority census tracts in Cleveland exceeded the percentage for those lenders. Firstar's denial disparity ratios for African-American and Hispanic individuals generally were somewhat higher than

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[62] Commenters criticized Firstar's record of home mortgage lending to LMI and minority individuals or in LMI and predominantly minority communities in the Chicago, Cleveland, Milwaukee, and St. Louis MSAs. Commenters also criticized Firstar's record of home mortgage lending to minority individuals in the Minneapolis and Nashville MSAs. In addition, commenters criticized U.S. Bancorp's record of home mortgage lending to minority applicants in the Denver and Minneapolis MSAs, and to LMI and minority individuals and in LMI and predominantly minority communities in the Milwaukee MSA.

the denial disparity ratios for that of lenders in the aggregate in its assessment areas.[63]

The 1999 HMDA data for U.S. Bancorp in the MSAs reviewed indicate that U.S. Bancorp's percentage of housing-related loans to minority individuals generally approximated or exceeded the percentage achieved by lenders in the aggregate. Moreover, U.S. Bancorp's denial disparity ratios for African-American and Hispanic individuals generally were somewhat lower than the denial disparity ratios for lenders in the aggregate in the areas reviewed. In addition, the data indicate that the percentage of U.S. Bancorp's housing-related loans to LMI individuals and in LMI communities generally was comparable with or exceeded that of lenders in the aggregate.

The Board is concerned when the record of an institution indicates disparities in lending 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 their race or income level.[64] The Board recognizes, however, that HMDA data alone provide an

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[63] The denial disparity ratio compares the denial rate for minority loan applicants with that for nonminority applicants.

[64] One commenter alleged that U.S. Bancorp has indirectly supported predatory lending through the business relationships of U.S. Bank with a number of subprime lenders that the commenter characterized as predatory lenders. According to the applicant, U.S. Bancorp's and Firstar's lending and trust affiliates have corporate loans to non-affiliated subprime lenders and act as trustee, registrar, and/or paying agent for securitization transactions. Some trust clients have securitizations that may have subprime assets as collateral. Firstar and U.S. Bancorp have represented that neither has a role, formal or otherwise, in the lending practices and review processes of their loan and trust customers nor has any knowledge of the lending practices followed by the party originating the loans.

incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.[65] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information. As noted above, examiners found no evidence of prohibited discrimination or other illegal credit practices at any of the subsidiary banks of Firstar and U.S. Bancorp. The record also indicates that Firstar and U.S. Bancorp have taken a number of affirmative steps to ensure compliance with fair lending laws. Firstar has instituted a corporate fair lending review program, and independent tests are periodically performed to verify that its subsidiary banks are in compliance with the program.[66] U.S. Bancorp has established policies and procedures to ensure compliance with all fair lending laws and regulations by conducting underwriting reviews of all retail loan applications,

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[65] For example, the data do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and 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 for a credit denial) are not available from HMDA data. HMDA data also may be incomplete and may not identify all applicants with regard to income level, ethnicity, or other demographic factors.

[66] Firstar's fair lending review program describes the underwriting standards, training programs, and review procedures that are designed to ensure compliance with all fair lending laws and regulations.

performing periodic comparative file analyses, and presenting a comprehensive fair lending training program. The Board also has considered the HMDA data in light of Firstar's and U.S. Bancorp's overall lending records, which show that their subsidiary banks significantly assist in helping to meet the credit needs of the communities served, including LMI areas.

F. Branch Closings

Two commenters expressed concern about the effect of possible branch closings that might result from this proposal. Firstar and U.S. Bancorp have provided the Board with their branch closing policies, and the Board has considered the public comments about potential branch closings in light of all the facts of record, including information provided by Firstar and U.S. Bancorp.

Firstar has indicated that it has no specific plans for any branch closings or consolidations in connection with this proposal. Firstar also indicated that it has not completed the analysis necessary to determine which, if any, branch closings or consolidations would be needed, and that it has not made any final decisions about branch closings or consolidations. Firstar has stated that any decisions to close or consolidate branches would be made in accordance with the interagency policy statement on branch closings and would be attentive to the need for financial services in LMI communities to be served by the combined organization.[67] The Board has carefully considered the branch closing policies of Firstar and U.S. Bancorp and their records of opening and closing branches. The Board notes that the branch closing policies of the subsidiary banks of Firstar and U.S. Bancorp provide that the banks must review the impact that each proposed

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[67] Joint Policy Statement Regarding Branch Closings (64 Federal Register 34,844 (1999).

branch closing would have on the community and develop a plan to minimize any adverse impact.

Examiners have reviewed the performance of Firstar's subsidiary banks under the branch closing policy on several occasions. Examiners noted that changes in Firstar Bank's branch locations did not adversely affect the availability of services in its assessment areas and that the bank had opened branches in LMI communities in some assessment areas. In addition, the most recent CRA performance evaluations of Firstar Bank's predecessors noted generally that the bank's branch closings did not affect LMI communities in a materially adverse manner and concluded that the banks' delivery systems were reasonably accessible to LMI individuals and areas.[68] Examiners also found that U.S. Bank's delivery systems were reasonably accessible to all portions of its assessment areas and that branch closures had not negatively affected customers residing in LMI communities.

The Board expects that the subsidiary banks of New U.S. Bancorp would continue to use a satisfactory branch closing policy for any branch closings that might result from the proposed transaction. The Board also has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to

[68] Two commenters alleged that Firstar had a poor record of closing branches in LMI and predominantly minority communities in Illinois and Kentucky. In recent years Firstar has participated in a number of bank mergers and acquisitions and is still in the process of integrating the institutions involved in these transactions and reconfiguring its branch system. From 1999 to 2000, this process resulted in a net loss (the number of opened branches minus the number of closed branches) of 12 branches nationwide, but no reduction in the number of branches in LMI census tracts. In Illinois and Kentucky, there has been a net loss of one branch in a moderate-income neighborhood in each state.

the public and to the appropriate federal supervisory agency before closing a branch.[69] The Board also notes that the appropriate federal supervisor for each of Firstar's subsidiary banks will, in the course of conducting CRA performance examinations, continue to review the branch closing record of these banks.

G. Conclusion on Convenience and Needs

In reviewing the effects of the proposal on the convenience and needs of the communities to be served, the Board has carefully considered the entire record, including all the information provided by commenters, Firstar, and U.S. Bancorp, evaluations of the CRA performance of each of Firstar's and U.S. Bancorp's insured depository institution subsidiaries, and confidential supervisory information.

Based on all the facts of record and for the reasons discussed above, 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 of the proposal.[70]

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[69] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings, requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency 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 closing, consistent with the institution's written policy for branch closings.

[70] Firstar has represented that it would honor the existing CRA commitments made by Firstar and U.S. Bancorp. Several commenters requested that Firstar and U.S. Bancorp provide certain commitments and answer certain questions, or that the Board impose specific conditions. The Board notes that the CRA requires that, in considering an acquisition proposal, the Board carefully review the actual performance records of the relevant depository institutions in helping to meet the credit needs of their communities. Neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges

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Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.[71] 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.[72] The Board's approval is specifically conditioned on compliance by

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concerning future performance under the CRA. The Board also notes that future activities of New U.S. Bancorp's subsidiary banks will be reviewed by the appropriate federal supervisors in future performance examinations, and their CRA performance records will be considered by the Board in any subsequent applications by New U.S. Bancorp to acquire a depository institution.

[71] Several commenters 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 rules, the Board in its discretion also may 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). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit their views, and numerous commenters have submitted written comments that have been considered carefully by the Board in acting on the proposal. The commenters' requests fail to demonstrate why their written comments do not present their views adequately. 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 on the proposal are denied.

[72] Several commenters requested that the Board delay action or extend the comment period on the proposal. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public reports and information, and considerable public comment. In the Board's view,

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Firstar with all the commitments made in connection with the application, including the branch divestiture commitments discussed in this order. These commitments are 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 the subsidiary banks of U.S. Bancorp 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 for good cause by the Board or by the Federal Reserve Bank of Minneapolis, acting pursuant to delegated authority.

By order of the Board of Governors,[73] effective February 12, 2001.

(signed)

Robert deV. Frierson
Associate Secretary of the Board

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for the reasons discussed previously, commenters have had ample opportunity to submit their views and, in fact, have provided substantial written submissions that have been considered carefully by the Board in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. 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 a further delay in considering the proposal, an extension of the comment period, or a denial of the proposal on the grounds discussed above or for informational insufficiency is not warranted.

[73] Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.

APPENDIX A

Banking Markets in which Firstar and U.S. Bancorp Compete Directly

Illinois

Chicago	Cook, DuPage, and Lake Counties.
Davenport-Rock Island	Rock Island County, excluding the towns of Drury and Buffalo Prairie, in Illinois; the towns of Colona, Edford, Geneseo, Hanna, and Western in Henry County, all in Illinois; and Scott County and the town of Farmington in Cedar County, all in Iowa.

Iowa

Ames	Boone and Story Counties and the towns of Marion, Clear Lake, Ellworth, Scott, Lyon, and Lincoln in Hamilton County.
Des Moines	Polk County and the town of Linn in Warren County.
Johnson	Johnson County, excluding the town of Jefferson; the northern portion of Washington County; and the town of Springdale in Cedar County.
Marengo	Iowa County and the southern portion of Benton County.

<u>Nebraska</u>

Omaha-Council Bluffs	Omaha-Council Bluffs Ranally Metro Area (“RMA”); portions of Douglas County, east of the Elkhorn River that are contiguous to the RMA, in Nebraska; and Pottawattamie County, excluding the eastern portion of the county, in Iowa.

<u>Minnesota</u>

Minneapolis-St. Paul	Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota Counties; Lent, Chisago Lake, Shafer, Wyoming, and Franconia Townships in Chisago County, all in Minnesota; Blue Hill, Baldwin, Orrock, Livonia, and Big Lake Townships and the City of Elk River in Sherburne County; Monticello, Otsego, Buffalo, Frankfort, Rockford, and Franklin Townships in Wright County, all in Minnesota; and Lanesburgh Township in Le Sueur County, all in Minnesota; and the Town of Hudson in St. Croix County, Wisconsin.

<u>Wisconsin</u>

Milwaukee	Milwaukee RMA.

APPENDIX B

Banking Markets Consistent with
DOJ Guidelines without Divestitures

Illinois

Chicago	Firstar operates the 12th largest depository institution in the market, controlling deposits of $2 billion, representing approximately 1.5 percent of market deposits. U.S. Bancorp operates the 36th largest depository institution in the market, controlling deposits of $531.8 million, representing less than 1 percent of market deposits. On consummation of the proposal, Firstar would operate the ninth largest depository institution in the market, controlling deposits of $2.6 billion, representing approximately 1.8 percent of market deposits. The HHI would increase by 1 point to 838.
Rock Island-Davenport	Firstar operates the second largest depository institution in the market, controlling deposits of $974.4 million, representing approximately 21.1 percent of market deposits. U.S. Bancorp operates the 32nd largest depository institution in the market, controlling deposits of $700,000, representing less than 1 percent of market deposits. On consummation of the proposal, Firstar would operate the second largest depository institution in the market, controlling deposits of $975.1 million, representing approximately 21.1 percent of market deposits. The HHI would increase by 1 point to 1112.

Iowa

Ames

Firstar operates the second largest depository institution in the market, controlling deposits of $186.9 million, representing approximately 14.5 percent of market deposits. U.S. Bancorp operates the 10th largest depository institution in the market, controlling deposits of $25.3 million, representing approximately 2 percent of market deposits. On consummation of the proposal, Firstar would operate the second largest depository institution in the market, controlling deposits of $212.2 million, representing approximately 16.5 percent of market deposits. The HHI would increase by 57 points to 1896.

Des Moines

Firstar operates the fourth largest depository institution in the market, controlling deposits of $475.5 million, representing approximately 8.8 percent of market deposits. U.S. Bancorp operates the ninth largest depository institution in the market, controlling deposits of $137.4 million, representing approximately 2.5 percent of market deposits. On consummation of the proposal, Firstar would operate the second largest depository institution in the market, controlling deposits of $612.9 million, representing approximately 11.3 percent of market deposits. The HHI would increase by 45 points to 1949.

Johnson

Firstar operates the second largest depository institution in the market, controlling deposits of $330.4 million, representing approximately 22.8 percent of market deposits. U.S. Bancorp operates the 12th largest depository institution in the market, controlling deposits of $10.5 million, representing less than 1 percent of market deposits. On consummation of the proposal, Firstar would operate the second largest depository institution in the market, controlling deposits of $340.9 million, representing approximately 23.6 percent of market deposits. The HHI would increase by 33 points to 2309.

Marengo	Firstar operates the seventh largest depository institution in the market, controlling deposits of $21.6 million, representing approximately 6.5 percent of market deposits. U.S. Bancorp operates the 11th largest depository institution in the market, controlling deposits of $15.6 million, representing approximately 4.7 percent of market deposits. On consummation of the proposal, Firstar would operate the third largest depository institution in the market, controlling deposits of $37.2 million, representing approximately 11.2 percent of market deposits. The HHI would increase by 61 points to 976.

<u>Nebraska</u>

Omaha- Council Bluffs	Firstar operates the seventh largest depository institution in the market, controlling deposits of $229.7 million, representing approximately 2.7 percent of market deposits. U.S. Bancorp operates the third largest depository institution in the market, controlling deposits of $1.2 billion, representing approximately 14 percent of market deposits. On consummation of the proposal, Firstar would operate the second largest depository institution in the market, controlling deposits of $1.4 billion, representing approximately 16.7 percent of market deposits. The HHI would increase by 75 points to 1901.[74]

[74] The proposal would be consistent with the DOJ Guidelines and Board precedent without divestitures. However, as noted previously, Firstar has agreed to divest branches in the Omaha-Council Bluffs banking market to address concerns expressed by the Department of Justice. After accounting for the proposed divestitures, Firstar would operate the second largest depository institution in the market, controlling deposits of $1.4 billion, representing approximately 16.3 percent of market deposits. The HHI would increase by 60 points to 1886.

Wisconsin

Milwaukee	Firstar operates the second largest depository institution in the market, controlling deposits of $4.8 billion, representing approximately 19.9 percent of market deposits. U.S. Bancorp operates the 17th largest depository institution in the market, controlling deposits of $288.1 million, representing approximately 1.2 percent of market deposits. On consummation of the proposal, Firstar would operate the second largest depository institution in the market, controlling deposits of $5 billion, representing approximately 21.1 percent of market deposits. The HHI would increase by 48 points to 1348.