

FEDERAL RESERVE SYSTEM

Westamerica Bank
San Rafael, California

Order Approving the Merger of Commercial Banks

Westamerica Bank, San Rafael (“Westamerica”), a state member bank and a wholly owned subsidiary of Westamerica Bancorporation, Fairfield, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) (“Bank Merger Act”), to merge with Kerman State Bank, Kerman (“Kerman”), all in California.¹ Westamerica also has applied under section 9 of the Federal Reserve Act (12 U.S.C. § 321) (“FRA”) to retain and operate branches at the locations of the main office and branch offices of Kerman.²

Notice of the proposal, affording interested persons an opportunity to comment, has been published locally in accordance with the Bank Merger Act and the Board’s Rules of Procedure (12 C.F.R. 262.3(b)). As required by the Bank Merger Act, reports on the competitive effect of the merger were requested from the United States Attorney General and relevant banking agencies. The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

¹ Kerman would merge with and into Westamerica, and Westamerica would be the surviving bank.

² The Kerman branches to be acquired by Westamerica, all in California, are at 5751 South Elm Street, Easton; 1312 P Street, Firebaugh; and 306 S. Madera Avenue, Kerman.

Westamerica is the 19th largest depository institution in California, controlling deposits of \$3.2 billion, representing less than 1 percent of total deposits of insured depository institutions in the state (“state deposits”).³

Kerman is the 215th largest depository institution in California, controlling total deposits of \$90.4 million, representing less than 1 percent of state deposits. On consummation of the proposal, Westamerica would remain the 19th largest depository institution, controlling deposits of approximately \$3.3 billion, representing less than 1 percent of state deposits.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or be in furtherance of any attempt to monopolize the business of banking. The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the community to be served.⁴

The Board has considered carefully the competitive effects of the proposal in light of all the facts of record. Westamerica competes directly with Kerman in the Fresno, California, banking market (“Fresno banking market”).⁵ Westamerica is the sixth largest depository institution in the market, controlling \$270 million in deposits, representing approximately 5 percent of total deposits in depository institutions in the market (“market deposits”). Kerman is the

³ Deposit and ranking data are as of June 30, 2001. In this context, depository institutions include commercial banks, savings banks, and savings associations.

⁴ 12 U.S.C. §§ 1828(c)(5)(A) and (B).

⁵ The Fresno banking market is defined as the Fresno Ranally Metropolitan Area and the towns of Chowchilla, Dinuba, Orange Cove, Reedley, and Parlier.

13th largest depository institution in the market, controlling \$77 million in deposits, representing 1.5 percent of market deposits. On consummation of the proposal, Westamerica would become the fourth largest depository institution in the Fresno banking market, controlling \$347 million in deposits, representing approximately 6.6 percent of market deposits.

The change in market concentration in the Fresno banking market, as measured by the Herfindahl-Hirschman Index (“HHI”), is consistent with Board precedent and the Department of Justice Merger Guidelines (“DOJ Guidelines”).⁶ The Department of Justice has reviewed the proposal and advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant market. No other agency has indicated that competitive issues are raised by this proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in the Fresno banking market or in any other relevant banking market.

Convenience and Needs Considerations

In acting on this proposal, the Board also must consider the convenience and needs of the communities to be served and take into account the

⁶ Under the DOJ Guidelines, 49 Federal Register 26,823 (1984), a market in which the post-merger HHI is between 1000 and 1800 is considered to be moderately concentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited purpose and other nondepository financial entities. On consummation of the proposal, the HHI would increase 15 points to 1482, and the market would remain moderately concentrated.

records of performance of the relevant depository institutions under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”). The CRA requires the federal 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 financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals. The Board has considered carefully the convenience and needs factor and the CRA performance records of Westamerica and Kerman in light of all the facts of record, including public comments received on the effect of the proposal on the communities to be served by the combined organization.

Two community groups submitted comments expressing concerns about the record of Westamerica in meeting the convenience and needs of the communities it serves.⁷ One commenter criticized Westamerica’s level of home mortgage lending to low-income and minority borrowers in the bank’s Marin and Fresno Counties assessment areas and its level of community development

⁷ These commenters also alleged that Westamerica threatened to bring a libel action against one of the groups for comments it made in connection with this proposal and that the threatened action was intended to suppress the group’s right to comment on the proposal. The commenters asked the Board to take steps to prevent banks from interfering with the free speech rights of community groups commenting on applications. Only the courts may adjudicate and enforce an applicant’s or commenter’s respective free speech rights under the United States Constitution and libel laws. Through its policies and procedures for submitting comments, however, the Board maintains an open application process designed to give all interested persons an opportunity to express their views on an application during the comment period and to submit comments for an institution’s CRA file. These policies and procedures were followed in this proposal and, as noted above, the commenters submitted timely comments that the Board has carefully considered.

investments and grants as being too low. Another commenter expressed concern about the loss of Kerman's local community banking practices, products, and services.⁸

A. CRA Performance Evaluations

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 Westamerica and Kerman. 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.⁹

Westamerica received a "satisfactory" CRA rating at its most recent CRA performance examination, as of April 10, 2000, by the Federal Reserve Bank of San Francisco.¹⁰ Likewise, Kerman received a "satisfactory" CRA rating at its most recent CRA performance examination, as of February 17, 1999, by the Federal Deposit Insurance Corporation. Examiners of both banks found no

⁸ Specifically, the commenter was concerned about the loss of Kerman's practices in making lending decisions locally, and its performance in meeting the lending needs of immigrants, farmers, and small businesses. Westamerica represented that it intends to keep the loan decision-making process in Fresno County, and that almost all commercial loan decisions would be made by employees who live and work in the county. Westamerica also stated that it would maintain Kerman's farm lending program and would continue Kerman's policy of offering small business loans.

⁹ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 and 36,639 (2001).

¹⁰ One commenter disagreed with Westamerica's "satisfactory" CRA performance rating. The commenter expressed concerns that the bank provided a low volume of lending, services, and investments that benefited LMI and minority individuals and communities, particularly in the bank's Marin and Fresno Counties assessment areas.

evidence of prohibited discrimination or other illegal credit practices at the banks and found no violations of the substantive provisions of fair lending laws.

B. Westamerica Bank's CRA Performance Record

In addition to the most recent CRA evaluation reports, the Board has carefully considered confidential supervisory information on the CRA performance and fair lending records of Westamerica. The Board also has reviewed a substantial amount of information submitted by Westamerica concerning its CRA performance and its activities to help ensure compliance with fair lending laws since the bank's last performance evaluation.

Lending. Westamerica received an examination rating of "high satisfactory" under the lending test for the review period in its most recent CRA performance evaluation.¹¹ Examiners reported that Westamerica's main focus was on small business lending.¹² Examiners noted that, although Westamerica's lending activities included both consumer and business loans, the bank's primary business strategy was to serve the needs of small- and middle-market businesses in its assessment areas. For the review period, examiners found that Westamerica's lending record reflected an affirmative effort and good responsiveness in meeting the credit needs of its assessment areas. In addition, examiners found that Westamerica's level of consumer lending to borrowers of different income levels

¹¹ The review period for Westamerica's CRA evaluation was January 1, 1998, through December 31, 1999. During the review period, Westamerica's assessment areas included all or portions of 21 counties in Northern and Central California. Full scope reviews were conducted in Westamerica's Marin, Fresno, and Sacramento Counties assessment areas.

¹² Examiners found that Westamerica's strong record of small business lending during the review period was a significant component in the bank's overall "satisfactory" CRA performance rating.

was adequate.¹³ For all types of loans, examiners found that Westamerica made a high percentage of its loans in its assessment areas, maintained a reasonable geographic distribution of its loans throughout those areas, and did not unreasonably exclude LMI communities. Examiners also noted that Westamerica's use of flexible lending standards helped it meet the credit needs of its assessment areas.

As noted by examiners, Westamerica's main focus is on small business lending. During the review period, examiners found that Westamerica made 60 percent of its small business loans to small businesses, and that the majority of those loans were in amounts of \$100,000 or less, which examiners found met the most significant credit needs of small businesses.¹⁴ In Marin County, Westamerica made 65 percent of its loans to small businesses, of which 60 percent were in amounts of \$100,000 or less. In Fresno County, Westamerica made 62 percent of its loans to small businesses, with 63 percent of those loans in amounts of \$100,000 or less.

¹³ Examiners noted that the housing composition of LMI census tracts in many of the bank's assessment areas limited opportunities for housing-related lending in those areas, and that prohibitive housing costs often limited the bank's ability to provide housing-related loans to LMI individuals. For example, examiners found that the median home sales price of \$450,000 in Marin County (as of November 1999) severely affected the home ownership opportunities of LMI and middle-income individuals in the county. Similarly, examiners found that even the median home sales price of \$90,000 in Fresno County generally made home ownership unaffordable for LMI families. Examiners noted that, given housing affordability issues and the low level of owner-occupied housing in low-income census tracts, Westamerica's distribution of loans in the assessment area was reasonable.

¹⁴ In this context, "small business loans" are business loans in amounts of \$1 million or less, and "small businesses" are businesses with annual gross revenues of less than \$1 million.

Since the last examination, Westamerica has maintained a high level of small business lending, particularly loans to small businesses, loans to businesses in LMI census tracts, and loans in smaller amounts. Westamerica represented that it made almost 51 percent of its commercial loans to small businesses during 2000 and 2001. For all of Westamerica's assessment areas during 2000 and 2001, the bank stated that it extended more than \$280 million in small business loans to small businesses, including loans totaling approximately \$135 million to businesses in LMI census tracts. Westamerica represented that its loans to small businesses totaled more than \$51 million in Marin County and more than \$32 million in Fresno County during this time period.¹⁵

In 2000, the percentage of Westamerica's small business loans in amounts of \$100,000 or less and the percentage of its small business loans in LMI census tracts compared favorably with the percentage achieved by the aggregate of lenders in Marin and Fresno Counties ("aggregate lenders").¹⁶ In addition,

¹⁵ Westamerica also represented that it participates in the government-sponsored Small Business Administration ("SBA") 504 loan programs which are designed to promote economic expansion and job growth. Westamerica stated that it offers all forms of SBA 504 loan programs, including purchase money, construction, and permanent financing. During 2000 and 2001, Westamerica funded 22 loans, totaling \$13.9 million, under the SBA 504 loan programs that were distributed in the Bay Area and the Central Valley of California.

¹⁶ In Marin County, Westamerica made approximately 18 percent of its small business loans in amounts of \$100,000 or less to businesses in LMI census tracts compared to 8.4 percent made by the aggregate lenders. Also, Westamerica made 15 percent of its small business loans in moderate-income census tracts in Marin County, compared with 7 percent made by the aggregate lenders. In Fresno County, Westamerica made 28 percent of its small business loans in amounts of \$100,000 or less to businesses in LMI census tracts compared with 22 percent made by the aggregate lenders. Also, Westamerica made 23 percent of its small business loans in LMI census tracts compared with 21 percent made by the aggregate lenders.

Westamerica's percentage of small business loans to small businesses compared favorably with that of the aggregate lenders.¹⁷

Examiners concluded that Westamerica extended a satisfactory level of community development loans during the review period. Westamerica provided \$59 million in community development loans in its assessment areas, the majority of which supported the creation of affordable housing for LMI individuals, with the remainder designed to provide social services to LMI individuals.¹⁸

Westamerica represented that, during 2000 and 2001, it funded 62 community development loans totaling more than \$64 million. The loans were used for affordable housing, low-income senior citizen housing, substance abuse education to low-income individuals, school rehabilitation and new classrooms in lower-income communities, and hospitals to provide care for farm workers. Westamerica stated that these loans were distributed throughout its assessment areas, including the Bay Area, the northern and southern areas of the Central Valley, and in more rural counties. Westamerica stated that, during 2000 and 2001, it made community development loans totaling \$3.5 million in Marin County to help provide affordable housing and provided additional funding for a low-

¹⁷ In Marin County, Westamerica made 54 percent of its small business loans to small businesses compared with 40 percent made by the aggregate lenders. In Fresno County, Westamerica made 64 percent of its small business loans to small businesses compared with 39 percent made by the aggregate lenders.

¹⁸ In Marin County, Westamerica made one community development loan totaling \$1.3 million to a nonprofit corporation that provides affordable housing. Examiners noted that the lack of available land for development and the participation of much larger banking institutions might have limited Westamerica's opportunities for greater participation in community development activities in the county. Examiners found that Westamerica made community development loans in Fresno County totaling more than \$7 million to a developer specializing in the construction of affordable housing for LMI and middle-income borrowers. Examiners determined that this level of community development lending was adequate to address the ongoing need for affordable housing in the county.

income, senior-citizen housing project. In addition, Westamerica lent \$1.3 million to a nonprofit agency that provides services for low-income substance abusers. Westamerica also stated that it funded \$6.3 million in community development loans in Fresno County during this time period.

Investments. Examiners rated Westamerica “high satisfactory” on its record of investment based on the bank’s considerable level of investment activity in the various assessment areas. During the review period, Westamerica significantly increased the amount of qualified investments it purchased since the date of the previous examination, from \$21 million to \$50 million, and made \$104,000 in qualified grants.¹⁹ Examiners found that Westamerica’s qualified investments benefited all the bank’s assessment areas, with the majority of the investments addressing the need for affordable housing to LMI individuals.²⁰ Examiners noted that Westamerica’s primary form of qualified investment was through the purchase of more than \$40 million of mortgage-backed securities comprised of loans to LMI individuals or in LMI tracts.²¹ In addition, Westamerica purchased a \$5 million mortgage revenue bond issued by the

¹⁹ The date of the previous CRA performance examination was April 1998.

²⁰ A commenter argued that Westamerica’s amount of charitable donations was too low and alleged that Westamerica’s donations as a percentage of its pre-tax income and the compensation of its Chief Executive Officer (“CEO”) were far below that of its competitors. The Board notes that the CRA requires the agencies to encourage depository institutions to help meet the credit needs of its community. The adequacy of an institution’s community development investments may only be determined in light of its overall CRA program, the types of community development investments made by the institution, and the needs of the local community. As noted above, examiners reviewing these factors rated Westamerica’s record of community development investments as “high satisfactory.”

²¹ Westamerica purchased \$833,657 of mortgage-backed securities that benefited Fresno County. In Marin County, Westamerica purchased \$1.7 million of

California Housing Finance Agency, the proceeds of which facilitated mortgage loans to LMI individuals throughout the state. Westamerica also purchased \$2.6 million in certificates issued by Fresno County school districts serving primarily LMI students. Examiners also noted that Westamerica continued to fund its \$8.2 million dollar equity investment in the California Corporate Tax Credit Fund, an organization that acquires a diversified portfolio of affordable housing properties throughout California.

Westamerica represented that, since its last examination, its community development investment strategy has been to assist in the creation of affordable housing primarily through purchases of low-income housing tax credits and municipal bonds. The bank stated that it has maintained investments totaling more than \$76 million (including investments made during 2000 and 2001 and investments retained in the bank's portfolio).²²

Services. Westamerica received a "low satisfactory" rating on its provision of retail banking and community development services at its last examination.²³ Examiners found that Westamerica's branches promoted

securities consisting of loan pools of 10 home mortgages to LMI individuals in Marin County.

²² Westamerica stated that it held three community development investments in Fresno County totaling \$2.7 million. In addition, Westamerica represented that, in light of the comparatively higher average income in Marin County, it decided to focus its community development investments in lower-income communities in other parts of the state.

²³ One commenter criticized Westamerica for maintaining "check cashing stores" separate from its banking branches in Marin County. Westamerica stated that it previously had operated a payday lending operation through a separate subsidiary, but that it had discontinued the operation. This commenter also criticized Westamerica for failing to provide Spanish-speaking loan officers at each of its branches, particularly those in the Fresno assessment area. Westamerica stated that, although it does not have bilingual loan officers at every branch, it does have bilingual bank personnel at every branch.

reasonable accessibility of bank products and services to the majority of homes and businesses in its assessment areas. In addition, examiners noted that the wide range of products and services that Westamerica offered included reduced-cost deposit services.

Examiners found, however, that the scope and amount of Westamerica's community development services was limited. In the Marin County assessment area, examiners determined that the bank provided an adequate level of community development services, including service by bank personnel in various advisory capacities to organizations serving primarily LMI individuals, the elderly, abused women, and first-time homebuyers. Bank personnel in the Fresno County assessment area provided similar community development services. Examiners noted that, during the review period, Westamerica developed a seminar program on basic budgeting, credit management, and saving skills. The bank presented the seminar in partnership with locally based nonprofit agencies.²⁴ Examiners also noted that other service activities were primarily conducted at the branch level and consisted of activities to promote affordable housing for LMI individuals, provide community services to LMI individuals, and support the development of small businesses and small farms.

In addition, examiners found that Westamerica had not closed any branches during the review period. Examiners noted that Westamerica's comprehensive branch closing policy provided that the bank may close a branch only after evaluating the potential impact of that closure.²⁵

²⁴ The seminars are designed for LMI individuals, women re-entering the workforce, at-risk youth, and welfare-to-work trainees. Examiners noted that, during the review period, 719 individuals participated in the 14 classes cosponsored by Westamerica.

²⁵ One commenter expressed concern about the possible closing of branches as a result of this merger. Westamerica represented that it plans to consolidate its existing branch office in Kerman after the merger but would retain Kerman's main

With respect to its retail and community services since the last examination, Westamerica stated that it offers low-cost checking and savings accounts and community outreach programs that are designed to benefit LMI individuals in all its assessment areas. Westamerica also stated that, during 2000 and 2001, it conducted 100 financial literacy seminars that were attended by almost 1,400 individuals, and promoted this program in all its communities through its involvement with the California Head Start Association.

C. Conclusion on Convenience and Needs Considerations

In reviewing the effect of the proposal on the convenience and needs of the communities to be served, the Board has considered carefully all the facts of record, including the comments received and the responses to the comments, evaluations of the performance of Westamerica and Kerman under the CRA, other information provided by Westamerica, and confidential supervisory information.²⁶ The record indicates that Westamerica has a number of areas of strong performance under the CRA. The bank also has opportunities for improvement of its overall satisfactory CRA record, and the Board encourages Westamerica to

office, which is less than one-half mile away, so there would be no discontinuance of services in Kerman or elsewhere as a result of this merger.

²⁶ One commenter requested that Westamerica make certain commitments and answer certain questions, and that the Board impose specific conditions or take specific actions against Westamerica. 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 provide commitments regarding future performance under the CRA, confer authority on the agencies to enforce commitments made to third parties, or require depository institutions to meet with particular persons. Westamerica's future activities will be reviewed by the Federal Reserve Bank of San Francisco in future performance evaluations, and its CRA performance record will be considered by the Board in any subsequent applications by Westamerica to acquire a depository institution.

pursue those opportunities. Based on all the facts of record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs are consistent with approval of the proposal.²⁷

Financial, Managerial, and Future Prospects

In reviewing the proposal under the Bank Merger Act and the FRA, the Board also has carefully reviewed the financial and managerial resources and the future prospects of the institutions involved. The Board has reviewed, among other things, confidential reports of examination and confidential supervisory information assessing the financial and managerial resources of the organizations received from their primary federal supervisors, and information provided by Westamerica. The Board notes that Westamerica will remain well capitalized on consummation of the proposal. In addition, the Board has considered Westamerica's record of successfully integrating acquired organizations. Based on all the facts of record, the Board concludes that the financial and managerial

²⁷ One commenter requested that the Board hold a public hearing or meeting in this case. The Bank Merger Act does not require the Board to hold a public hearing or meeting on an application. Under its rules, the Board may, in its discretion, hold a public meeting on an application to clarify factual issues related to the application and to provide an opportunity for testimony, if necessary. See 12 C.F.R. 262.25(e). The Board has carefully considered the commenter's request in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal and, in fact, the commenters have submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately. The commenter's request also fails to identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

resources and future prospects of the institutions involved and other supervisory factors are consistent with approval of the proposal.²⁸

Conclusion

Based on the foregoing, the Board has determined that the proposal should be, and hereby is, approved.²⁹ The Board's approval is specifically conditioned on compliance by Westamerica with all the commitments made in connection with the applications. For purposes of this action, the commitments and conditions relied on by the Board in reaching this decision shall be deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The transaction may not be consummated before the fifteenth calendar day after the effective date of this order, and not later than three months after the effective date of this order, unless such period is extended for good cause by the

²⁸ One commenter criticized Westamerica for allegedly failing to disclose its CEO's compensation and asserted that the compensation was "excessive" and could endanger the safety and soundness of the bank. This commenter also speculated that the bank's safety and soundness could be affected by Westamerica's decision to allow the same individual to hold the positions of CEO, Chairman of the Board, and President in the organization. The Board has reviewed these allegations in light of confidential reports of examination and other information on the financial and managerial resources of Westamerica.

²⁹ One commenter requested that the Board delay action on the proposal. The Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and considerable public comment. In the Board's view, and for the reasons discussed above, commenters have had sufficient opportunity to submit their views and, in fact, have provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time, and that a delay in considering the proposal or a denial of the proposal on the grounds discussed above or on the basis of informational insufficiency is not warranted.

Board or the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors,³⁰ effective June 4, 2002.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

³⁰ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, and Olson.