

FEDERAL RESERVE SYSTEM

FirstMerit Corporation
Akron, Ohio

Order Approving the Acquisition of a Bank Holding Company

FirstMerit Corporation (“FirstMerit”), Akron, Ohio, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Citizens Republic Bancorp, Inc. (“Citizens”) and thereby indirectly acquire its subsidiary bank, Citizens Bank (“Citizens Bank”), both of Flint, Michigan. Immediately following the proposed acquisition, Citizens Bank would be merged into FirstMerit’s subsidiary bank, FirstMerit Bank, N.A. (“FirstMerit Bank”), Akron.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (77 Federal Register 64338 (2012)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

FirstMerit, with consolidated assets of approximately \$14.9 billion, is the 76th largest insured depository organization in the United States, controlling approximately \$11.8 billion in consolidated deposits. FirstMerit Bank operates in Ohio, Illinois, and Pennsylvania. FirstMerit Bank is the seventh largest depository institution in Ohio, controlling deposits of approximately \$8.7 billion, which represent 3.6 percent of the total deposits of insured depository institutions in the state.³ FirstMerit Bank is the 19th largest insured depository institution in Illinois, controlling deposits of

¹ 12 U.S.C. § 1842.

² The merger of Citizens Bank into FirstMerit Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) under the Bank Merger Act.

³ State deposit and asset data are as of June 30, 2012. All other asset data are as of December 31, 2012, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

approximately \$2.7 billion, and the 128th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$200 million, which represent less than 1 percent of the total deposits of insured depository institutions in those states, respectively.

Citizens, with total consolidated assets of \$9.6 billion, controls Citizens Bank, which controls approximately \$7.2 billion in deposits. Citizens Bank operates in Michigan, Wisconsin, and Ohio. Citizens Bank is the 62nd largest insured depository institution in Ohio, controlling deposits of approximately \$306.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, FirstMerit would become the 55th largest depository organization in the United States, controlling consolidated deposits of approximately \$19.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FirstMerit Bank would remain the seventh largest insured depository institution in Ohio, controlling deposits of approximately \$9.0 billion, which would represent 3.7 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁴ However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for

⁴ The standard was changed from adequately capitalized and adequately managed to well capitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(d)(1)(A).

the lesser of the state statutory minimum period of time or five years.⁵ In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the applicant controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.⁶

For purposes of the BHC Act, the home state of FirstMerit is Ohio,⁷ and Citizens is located in Michigan, Ohio, and Wisconsin.⁸ FirstMerit is well capitalized and well managed under applicable law. Michigan and Wisconsin have no minimum requirements for period of operation,⁹ and Citizens Bank has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is \$9.9 trillion. On consummation of the proposed transaction, FirstMerit would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 3(d) of the BHC Act.

⁵ 12 U.S.C. § 1842(d)(1)(B).

⁶ 12 U.S.C. § 1842(d)(2)(A).

⁷ See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

⁸ For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)-(7) and 1842(d)(1)(A) and 1842(d)(2)(B).

⁹ See MSA § 487.13702 and WSA § 221.0901(8) (both permit interstate acquisitions but do not impose a requirement for period of operation).

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 market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

FirstMerit and Citizens compete directly in the Akron and Cleveland, Ohio, banking markets.¹¹ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market

¹⁰ 12 U.S.C. § 1842(c)(1).

¹¹ The Akron banking market is defined as Summit County (excluding Sagamore Hills, Northfield Center, Twinsburg, Richfield and Boston townships, the villages adjoining these townships, and the cities of Twinsburg, Macedonia, and Hudson); Franklin, Ravenna, Charlestown, Paris, Brimfield, Rootstown, Edinburg, Palmyra, Suffield, Randolph, Atwater, and Deerfield townships, and the city of Kent in Portage County; Guilford, Wadsworth, and Sharon townships, and the city of Wadsworth in Medina County; Lawrence and Lake townships in Stark County; and Milton and Chippewa townships, and the villages adjoining those townships, in Wayne County, all in Ohio (the “Akron banking market”). The Cleveland, Ohio banking market is defined as Cuyahoga, Lake, Lorain, and Geauga Counties; Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston townships, the villages surrounding those townships, and the cities of Macedonia, Twinsburg, and Hudson in Summit County; Homer, Harrisville, Westfield, Spencer, Chatham, Lafayette, Montville, Litchfield, York, Medina, Granger, Liverpool, Brunswick Hills, and Hinckley townships, and the cities of Medina and Brunswick in Medina County; Mantua, Hiram, Nelson, Shalersville, Freedom, and Windham townships, and the cities of Aurora and Streetsboro in Portage County; and the city of Vermilion (not the whole township) in Erie County, all in Ohio (the “Cleveland banking market”).

deposits”) controlled by FirstMerit and Citizens,¹² the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Competitive Review Guidelines (“DOJ Bank Merger Guidelines”),¹³ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Akron and Cleveland banking markets. On consummation of the proposal, the banking markets would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.¹⁴

¹² Deposit and market share data are as of June 30, 2012, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve 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 Bank Merger Guidelines, 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 exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would 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. Although DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, see Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

¹⁴ FirstMerit Bank operates the sixth largest depository institution in the Cleveland banking market, controlling deposits of approximately \$3.1 billion, which represent approximately 6.7 percent of market deposits. Citizens Bank operates the 17th largest depository institution in the market, controlling deposits of approximately \$293.4 million, which represent less than 1 percent of market deposits. On consummation, FirstMerit Bank would operate the sixth largest depository institution in the market, controlling weighted deposits of approximately \$3.4 billion, which represent approximately 7.3 percent of market deposits. The HHI would increase by 9 points to 1045. FirstMerit Bank operates the largest depository institution in the Akron banking market, controlling

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which FirstMerit Bank and Citizens Bank compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include the financial and managerial resources (including consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the communities to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all of these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by FirstMerit, and a public comment received on the proposal.

deposits of approximately \$3.0 billion, which represent approximately 29.6 percent of market deposits. Citizens Bank operates the 22nd largest depository institution in the market, controlling deposits of approximately \$13.1 million, which represent less than 1 percent of market deposits. On consummation, FirstMerit Bank would control deposits of approximately \$3 billion, which represent approximately 29.7 percent of market deposits. The HHI would increase by 8 points to 1497.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. FirstMerit and FirstMerit Bank are well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger, structured as a share exchange. Each share of Citizens' common stock would be cancelled and converted into the right to receive FirstMerit common stock based on an exchange ratio.¹⁵ FirstMerit is in stable financial condition, and the asset quality and earnings of both FirstMerit Bank and Citizens Bank are consistent with approval. On a pro forma basis, the acquisition of Citizens is not expected to have a negative impact on FirstMerit's operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of FirstMerit, FirstMerit Bank, Citizens, and Citizens

¹⁵ As part of the proposed transaction, FirstMerit would pay the United States Department of the Treasury in full for all of Citizens' Troubled Asset Relief Program ("TARP") preferred stock, including accumulated but unpaid dividends.

Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered FirstMerit's plans for implementing the proposal.

FirstMerit, FirstMerit Bank, Citizens, and Citizens Bank are each considered to be well managed. FirstMerit's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of FirstMerit have substantial knowledge and experience in the banking and financial services sectors.¹⁶ Both the chairman and chief executive officer of FirstMerit would continue in their roles following consummation of the proposed transaction.

FirstMerit successfully integrated into its operations the banking operations of three insured depository institutions located in the Chicago, Illinois, market, including the assets and deposits of two failed depository institutions in 2010. FirstMerit is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. FirstMerit would implement its risk-management policies, procedures, and controls at the combined organization, and they are considered acceptable from a supervisory perspective. In addition, FirstMerit's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and FirstMerit is proposing to integrate Citizens Bank's existing management and personnel in a manner that augments FirstMerit's management.¹⁷

¹⁶ On consummation, FirstMerit's board of directors would include two additional directors from Citizens' current board of directors.

¹⁷ The commenter referred to press releases issued by two rating agencies raising concerns regarding possible integration difficulties and FirstMerit's entry into new markets. The commenter also referred to outstanding litigation associated with the proposed transaction. The record in this case supports the conclusion that FirstMerit

FirstMerit's integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must 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").¹⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹⁹ and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁰

The Board has considered all the facts of record, including reports of examination of the CRA performance of FirstMerit Bank and Citizens Bank, data reported by FirstMerit Bank and Citizens Bank under the Home Mortgage Disclosure Act ("HMDA"),²¹ other information provided by FirstMerit, confidential supervisory

has the necessary support structures, and human and financial resources, to integrate the organizations' operations. In addition, the referenced litigation has been settled.

¹⁸ 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

²¹ 12 U.S.C. § 2801 et seq.

information, and the public comment received objecting to the proposal. The commenter objected to the proposal on the basis of the mortgage lending records of FirstMerit Bank and Citizens Bank as reflected in HMDA data.

1. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.²² The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.²³ 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.

CRA Performance of FirstMerit Bank.

FirstMerit Bank was assigned an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of November 17, 2008 ("FirstMerit Evaluation"). Examiners concluded that the distribution of loans among borrowers of different income levels was good overall, including lending in LMI areas.²⁴ OCC examiners noted that FirstMerit Bank's community development lending performance reflected an excellent level of responsiveness to community needs. FirstMerit Bank

²² See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

²³ 12 U.S.C. § 2906.

²⁴ The Akron, Canton, and Cleveland assessment areas were selected for full-scope reviews in Ohio. FirstMerit Bank's Ohio ratings are based primarily on conclusions reached for the bank's performance in these full-scope assessment areas. Performance in the Akron and Cleveland assessment areas is weighed more heavily than the Canton assessment area. A limited scope review was performed in the Toledo assessment area.

received an “outstanding” rating on the Lending Test and “high satisfactory” ratings on both the Investment and Service Tests.²⁵

CRA Performance of Citizens Bank.

Citizens Bank was assigned a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of November 1, 2010 (“Citizens Evaluation”),²⁶ with ratings of “high satisfactory” for the Lending Test and “low satisfactory” for the Investment and Service Tests.²⁷ Examiners concluded that Citizens Bank exhibited excellent penetration among borrowers of different income levels and businesses of different sizes based on the bank’s record of lending to small businesses.

2. Fair Lending Record

The Board has considered the records of FirstMerit Bank and Citizens Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the FirstMerit and Citizens Evaluations and an evaluation of FirstMerit Bank’s record of performance in providing community development lending and services since the FirstMerit Evaluation. This also includes an evaluation of FirstMerit Bank’s fair lending policies and procedures and consideration of

²⁵ The evaluation period for the Lending Test in the FirstMerit Evaluation was January 1, 2004, through December 31, 2007, except for community development loans, which had an evaluation period from May 17, 2004, through November 17, 2008. The evaluation period for the Investment and Service Tests was from May 17, 2004, through November 17, 2008.

²⁶ The rating was an improvement from the “needs to improve” rating Citizens Bank received during the previous CRA review, in 2008. The review period for the 2010 evaluation of loans reported under the HMDA and the CRA was January 1, 2008, to December 31, 2009, and for the evaluation of community development activities was January 1, 2008, through October 31, 2010. Citizens Bank’s current CRA evaluation by the Federal Reserve Bank of Chicago commenced in the fourth quarter of 2012.

²⁷ For the 2010 evaluation, the review period for the evaluation of loans reported under the HMDA and the CRA was January 1, 2008, to December 31, 2009, and for the evaluation of community development activities was January 1, 2008, through October 31, 2010.

other agencies' views on FirstMerit Bank's record of performance under fair lending laws. The Board also has taken into account the comment on the application.

The FirstMerit Evaluation.

As described in the FirstMerit Evaluation, OCC examiners found that FirstMerit Bank provided significant levels of community development loans and qualified community development investments. In the FirstMerit Evaluation, examiners noted that delivery systems were accessible to geographies and individuals of different income levels. Examiners found that FirstMerit Bank had a good record of participating in community development initiatives.

Examiners stated that FirstMerit Bank had been highly responsive to community needs through its community development lending. The community development loans reflected a variety of community development purposes including affordable housing, funding for organizations providing community services targeted to LMI individuals and families, activities that revitalize or stabilize LMI geographies, and initiatives that provide financing to small businesses. With respect to community development services, FirstMerit Bank was found to have a good record of participating in community development initiatives, especially considering the limited opportunities for working with local organizations that provide community development services.

The OCC assigned FirstMerit Bank a rating of "outstanding" for the Lending Test, noting that the bank had an excellent community development lending record. Examiners found that FirstMerit Bank's overall geographic distribution performance and borrower distribution performance were good. Examiners noted that FirstMerit Bank's excellent community development lending record had a significant positive impact on its Lending Test performance. During the evaluation period, FirstMerit Bank generated 56 community development loans totaling \$43.5 million in the Akron Metropolitan Statistical Area ("MSA"), and 66 community development loans totaling \$38.2 million in the Cleveland MSA. In addition to the community development loans, examiners noted that in the Cleveland MSA, FirstMerit Bank originated 19 loans totaling \$4 million for home mortgage and small business purposes

that also had community development characteristics, which demonstrate FirstMerit Bank's commitment to community development lending. Examiners noted that in the Toledo MSA, the bank's performance was weaker than the bank's overall performance in the state due to weaker geographic distribution records and lower levels of community development lending.²⁸

Examiners assigned FirstMerit Bank a rating of "high satisfactory" for the Investment Test. Examiners highlighted FirstMerit Bank's qualified investments in the Ohio Equity Fund Limited Partnership funds and other low-income housing tax credit facilities, FirstMerit Bank's community development corporation ("CDC"), and grants to local organizations to support community development initiatives within the bank's assessment areas. In particular, FirstMerit's \$7.6 million equity investment in the FirstMerit CDC was given positive consideration by the examiners. Projects financed by the CDC are types that the bank cannot normally provide similar degrees of support because the CDC can use less stringent financing standards. Most of the investments addressed affordable housing and social service needs of LMI individuals. Examiners also noted that FirstMerit Bank had taken leadership roles in some projects and combined loan and investment activities to fund initiatives.

The Citizens Evaluation.

As noted above, Citizens Bank received a "high satisfactory" rating for the Lending Test in the Citizens Evaluation. Federal Reserve examiners concluded that Citizens Bank exhibited excellent penetration among borrowers of different income levels and businesses of different sizes based on the bank's record of lending to small businesses. Examiners found that Citizens Bank made a relatively high level of community development loans in the full review assessment areas in Michigan and

²⁸ The Toledo assessment area was not included as a full-scope assessment area because of FirstMerit's relatively low level of lending volume in the Toledo MSA. For example, from January 1, 2004, to December 31, 2007, FirstMerit reported only 373 total loans in the Toledo MSA as compared to 8,081 in the Akron MSA, 5,430 in the Canton MSA, and 11,454 in the Cleveland MSA.

Ohio. Examiners highlighted Citizens Bank's use of innovative and flexible lending programs and practices to help meet the credit needs of LMI individuals and LMI areas.

The Reserve Bank assigned Citizens Bank a rating of "low satisfactory" for the Investment Test. Examiners found that Citizens Bank had an adequate level of qualified community development investments. Examiners noted that Citizens Bank was adequately responsive to the credit and community development needs in its assessment areas and occasionally used innovative or complex investments to support community development initiatives.

The Reserve Bank assigned Citizens Bank a rating of "low satisfactory" for the Service Test. Examiners found that service delivery systems were accessible to all portions of Citizens Bank's assessment areas. Examiners found that Citizens Bank provided an adequate level of community development services in most geographies.

FirstMerit Bank's efforts since the 2008 CRA Evaluation.

According to FirstMerit, since the FirstMerit Evaluation, FirstMerit Bank has invested \$18 million in Low Income Housing Tax Credit Equity Funds syndicated by the Ohio Capital Corporation for Housing, providing direct equity to affordable housing projects throughout Ohio. FirstMerit Bank has provided small business loans of almost \$665 million in the Akron, Cleveland, and Toledo MSAs.²⁹ During this same time period, FirstMerit Bank has provided community development loans of over \$126 million in the Akron, Cleveland, and Toledo MSAs.³⁰ Examples of community development projects include \$7.1 million in Akron to create single family homes for LMI families and affordable housing for low-income seniors, participation in the Cleveland Housing Network to provide housing for more than 2,000 families in Cleveland, and \$4.6 million in a senior housing development in Toledo.

²⁹ The small business lending comprises \$234 million in the Akron MSA, \$388 million in the Cleveland MSA, and \$43 million in the Toledo MSA.

³⁰ The community development lending comprises \$19 million in the Akron MSA, \$101 million in the Cleveland MSA, and \$6 million in the Toledo MSA.

FirstMerit's Fair Lending Program.

The Board also considered information about FirstMerit's compliance and risk-management systems and the steps it has taken to ensure compliance with fair lending laws. FirstMerit has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. FirstMerit's legal and compliance risk management program includes procedures to evaluate new laws and regulations to determine applicability to FirstMerit's mortgage operations, annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls, fair lending training for all lending-related employees, specialized training for personnel with higher fair lending risk, ongoing statistical regression analysis of loan data, comparative loan file reviews, legal and compliance reviews for all fair lending complaints, and a second review committee, which reviews all home mortgage loan applications initially recommended for denial or for approval based on a policy exception. FirstMerit also has a corporate fair lending committee, which is charged with reviewing fair lending compliance and regulatory changes and recommending policy and procedural changes aimed at ensuring compliance with fair lending laws and regulations. FirstMerit's risk-management systems and policies and procedures for assuring compliance with fair lending laws will be implemented at the combined organization.

Consultation with the OCC and the CFPB.

The Board has reviewed the FirstMerit and Citizens Evaluations and consulted with the OCC and the Consumer Financial Protection Bureau ("CFPB") with respect to FirstMerit Bank's record of fair lending performance since the FirstMerit Evaluation. The OCC reported, based on its review of supervisory information, that it did not find evidence that FirstMerit Bank engaged in discriminatory conduct during the period before which the CFPB assumed jurisdiction over federal consumer financial laws.³¹ The OCC has indicated that the bank's operations and compliance program are compliant with fair lending and other consumer protection laws. Based on its

³¹ See 12 U.S.C. § 5481(14).

consultation with the CFPB, the Board is satisfied with FirstMerit's performance, policies, and procedures in the areas reviewed by that agency.

The OCC conducted a pre-merger examination of Citizens Bank in October 2012. The OCC identified specific measures FirstMerit Bank must take to enhance its fair lending compliance program in order to ensure continued fair lending compliance by the combined organization. As a condition of approval, FirstMerit must ensure that FirstMerit Bank is in full compliance with the OCC's requirements within 180 days of the date of this order.

3. HMDA Analysis and Public Comment on the Application

The commenter cited HMDA data and alleged that FirstMerit Bank made fewer conventional home purchase loans to African-American and Hispanic applicants than to white applicants and disproportionately denied applications by minority applicants for conventional home purchase loans in the Akron and Cleveland MSAs. The commenter further alleged low levels of conventional home purchase lending by FirstMerit Bank to African-American applicants relative to those for white applicants in the Toledo MSA. In addition, the commenter cited HMDA data and alleged that Citizens Bank made fewer conventional home purchase loans to African Americans than to whites in the Akron and Cleveland MSAs.

The Board has reviewed HMDA data from 2010 and 2011 reported by FirstMerit Bank, FirstMerit Mortgage Corporation ("FirstMerit Mortgage"), and Citizens Bank, the most recent publicly available data.³² In response to the comment, the Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns, as well as the subset of that data related specifically to conventional home purchase loans, which was the subject of the public comment received on the proposal. Within those data sets, the Board focused its review on the races and ethnicities highlighted by the public comment, in this case, African Americans and Hispanics.

³² FirstMerit Mortgage, a wholly owned mortgage banking subsidiary of FirstMerit Bank, services the loans it originates as well as those originated by FirstMerit Bank.

The Board considered not only the MSAs addressed in the public comment (Akron, Cleveland, and Toledo), but also the MSAs in which FirstMerit Bank and Citizens Bank have their headquarters and all of the states in which FirstMerit Bank, FirstMerit Mortgage, and Citizens Bank originate HMDA-reportable loans.

With respect to FirstMerit Bank and Citizens Bank, the Board confirmed the levels of conventional home purchase loans and denial disparity ratios associated with conventional home purchase loans noted by the commenter. In addition, the Board's analysis for all HMDA-reportable loans revealed small differences in the percentages of loan applications received and loans originated by FirstMerit Bank and FirstMerit Mortgage for applicants residing in majority-minority tracts³³ in the Cleveland MSA as compared to the percentages of loan applications received and loans originated by all HMDA reporters for applicants residing in majority-minority tracts in the Cleveland MSA. The Board did not find any significant disparities with respect to Citizens Bank. The Board communicated its findings with respect to FirstMerit to the OCC and the CFPB.

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions 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 ethnicity. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether FirstMerit Bank and FirstMerit Mortgage have excluded or denied credit to any group on a prohibited basis.³⁴

³³ In this case, majority-minority tracts are those where a majority of the population is African American and/or Hispanic.

³⁴ The data, for example, 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. In addition, credit history

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by FirstMerit Bank and Citizens Bank with fair lending laws and regulations. The Board also has consulted with the OCC and the CFPB about this proposal, including the record of FirstMerit Bank with fair lending laws and regulations since the FirstMerit Evaluation.

With respect to the specific HMDA data on conventional home mortgages cited by the commenter, FirstMerit provided information on the nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). With respect to the small differences in the percentages of loan applications received and loans originated by FirstMerit Bank and FirstMerit Mortgage identified in the Board's analysis for applicants residing in majority-minority tracts in the Cleveland MSA as compared to the aggregate, the Board has concluded that these differences alone would not be enough to preclude approval. FirstMerit Bank branches are accessible to majority-minority areas in the Cleveland MSA, with four branches in majority-minority tracts.³⁵ FirstMerit Bank has not attempted to adjust its assessment area to exclude majority-minority areas for CRA purposes, but rather has included the entire Cleveland MSA into its assessment area. FirstMerit also has provided the Board with detailed information on its training, marketing, and advertising, and centralized underwriting programs reflecting its commitment to the prevention of prescreening, discouragement, or exclusion of credit applications on a prohibited basis. Based on its review of information to date, the Board has not found evidence that FirstMerit has engaged in discrimination or other illegal credit practices.

problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

³⁵ This information is based on census demographic data for the year 2012 that were updated in June 2012 using 2006-2010 ACS and Census 2010 SF1-based data.

Based on this information, as well as the views of the CFPB and the OCC on FirstMerit Bank's record of fair lending performance, and considering the fair lending policies and procedures and compliance record of FirstMerit Bank, the Board concludes that FirstMerit Bank's fair lending record is consistent with approval and that the HMDA disparities cited by the commenter and identified by the Board are not a barrier to approval.

4. Convenience and Needs of Communities to be Served by the Combined Organization

The Board has considered the extent to which the proposal would benefit the customers of FirstMerit Bank, Citizens Bank, or both. Such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of either of the parties.

FirstMerit represents that the proposal would result in cost savings for the combined organization by reducing its funding costs and consolidating redundant functions, including Citizen's reliance on third-party vendors to supply services to its customers. The Board has considered that decreased funding costs could result from the fact that FirstMerit would redeem Citizens Bank's TARP shares with alternative funding, allowing it to lower its debt service; Citizens' stable base of short-term deposits would allow FirstMerit to reduce its reliance on more expensive wholesale funding sources; and the combined organization would pay lower FDIC insurance assessments.

FirstMerit also has stated that it would be able to use its existing infrastructure to perform a variety of services that Citizens currently contracts with third-party vendors to provide. In addition to the projected cost savings, FirstMerit represents that, by providing certain services in-house, they would have the ability to provide more customization than is currently offered by Citizens Bank through third parties. For example, FirstMerit has represented that it would assume responsibilities from third-parties that issue credit cards, provide international trade letters of credit, and originate mortgages for Citizens' customers on Citizens' behalf.

The merger also would extend the branch and ATM footprints of FirstMerit Bank and Citizens Bank to cover portions of five states. The resulting network would be contiguous over a broader geographic area than is currently available to customers of either institution. Consumers that commute to work and businesses located across multiple geographic areas are likely to be the primary beneficiaries of the larger branch network.

Finally, FirstMerit represents that, as a result of the merger, Citizens' customers would have access to a variety of consumer and business services that are not currently offered by Citizens. Citizens' retail customers would have access to private banking, wealth management, and additional lending products. As a result of the merger, Citizens' small business customers would gain access to a variety of financial services such as mobile banking and merchant services, commercial purchasing cards, and import/export services. First Merit also represents that it would expand Citizens' commercial and industrial lending business and hire additional commercial lending officers at Citizens Bank branches, and that, as a result of the merger, Citizens' business customers would have access to larger loans.

5. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by FirstMerit, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of FirstMerit Bank's and Citizens Bank's mortgage lending operations and compliance programs, review of examination reports, and consultations with the OCC and the CFPB, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board encourages FirstMerit Bank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system.”³⁶

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm; the availability of substitute providers for any critical products and services offered by the resulting firm; the interconnectedness of the resulting firm with the banking or financial system; the extent to which the resulting firm contributes to the complexity of the financial system; and the extent of the cross-border activities of the resulting firm.³⁷ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁸

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, FirstMerit would have approximately \$24 billion in consolidated assets and, by any of a number of alternative measures of firm size, FirstMerit would be between the 50th and 75th largest

³⁶ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

³⁷ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁸ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

U.S. insured depository organization. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, FirstMerit's intrafinancial assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.³⁹ In reaching its

³⁹ The public commenter requested that the Board hold a public 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 authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony

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. The Board's approval is specifically conditioned on compliance by FirstMerit with all the conditions imposed in this order and the commitments made to the Board in connection with the application, including receipt of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors,⁴⁰ effective March 22, 2013.

(signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

⁴⁰ Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, Raskin, Stein, and Powell.