

FEDERAL RESERVE SYSTEM

Old National Bancorp
Evansville, Indiana

Order Approving the Acquisition of a Bank Holding Company

Old National Bancorp (“Old National”), Evansville, Indiana, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire First Midwest Bancorp, Inc. (“First Midwest”), a bank holding company, and thereby indirectly acquire First Midwest Bank (“FMB”), both of Chicago, Illinois. Following the proposed acquisition, FMB would be merged with and into Old National’s subsidiary national bank, Old National Bank (“ONB”), Evansville, Indiana.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 Federal Register 33707 (June 25, 2021)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Old National, with consolidated assets of approximately \$24.0 billion, is the 89th largest insured depository organization in the United States. Old National controls approximately \$18.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1842.

³ The merger of FMB into ONB was approved by the Office of the Comptroller of the Currency (“OCC”) on August 19, 2021, pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c).

⁴ 12 CFR 262.3(b).

States.⁵ Old National controls ONB, which operates branches in Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin. ONB has total assets of \$23.9 billion.⁶ ONB is the 223rd largest insured depository institution in Illinois, controlling deposits of approximately \$196 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. ONB is the 5th largest insured depository institution in Indiana, controlling deposits of approximately \$9.4 billion, which represent approximately 5 percent of the total deposits of insured depository institutions in that state. ONB is the 15th largest insured depository institution in Wisconsin, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷

First Midwest, with consolidated assets of approximately \$21.8 billion, is the 93rd largest insured depository organization in the United States. First Midwest controls approximately \$17.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Midwest controls FMB, which operates in Illinois, Indiana, Iowa, and Wisconsin. FMB is the 10th largest insured depository institution in Illinois, controlling deposits of approximately \$14.8 billion, which represent approximately 2 percent of the total deposits of insured depository institutions in that state. FMB is the 25th largest insured depository institution in Indiana, controlling deposits of approximately \$1.3 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. FMB is the 21st largest insured depository institution in Wisconsin, controlling deposits of approximately \$1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

⁵ Consolidated asset and national deposit, ranking, and market share data are as of September 30, 2021.

⁶ Total assets are as of September 30, 2021.

⁷ State deposit ranking and deposit data are as of June 30, 2021.

On consummation of the proposal, Old National would become the 59th largest insured depository organization in the United States, with consolidated assets of approximately \$45.8 billion, which would represent less than 1 percent of the total assets of insured depository organizations in the United States. Old National would control total consolidated deposits of approximately \$35.4 billion, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, ONB would become the 10th largest insured depository institution, controlling deposits of approximately \$15.0 billion, which would represent approximately 2 percent of the total deposits of insured depository institutions in that state. In Indiana, ONB would become the 4th largest insured depository institution, controlling deposits of approximately \$10.6 billion, which would represent approximately 6 percent of the total deposits of insured depository institutions in that state. In Wisconsin, ONB would become the 8th largest insured depository institution, controlling deposits of approximately \$2.7 billion, which would represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁸ The Board (1) may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum

⁸ 12 U.S.C. § 1842(d)(1)(A). 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. See 12 U.S.C. § 1841(o)(4)(C).

period of time or five years;⁹ (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 (“CRA”)¹⁰ and the applicant’s record of compliance with applicable state community reinvestment laws;¹¹ and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in the target bank’s home state or in any state in which the acquirer and target have overlapping banking operations.¹²

For purposes of the BHC Act, the home state of Old National is Indiana. FMB is located in Illinois, Indiana, Iowa, and Wisconsin. Old National is well capitalized and well managed under applicable law. ONB has a “Satisfactory” rating under the CRA, and none of the jurisdictions in which Old National operates has a state community reinvestment law that applies to this proposal. Illinois has a minimum age requirement that applies to Old National’s acquisition of FMB.¹³ There are no minimum age requirements under the laws of Indiana, Iowa, or Wisconsin that apply to Old National’s acquisition of FMB.¹⁴ FMB has been in existence for more than five years.

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 12 U.S.C. § 2901 *et seq.*

¹¹ 12 U.S.C. § 1842(d)(3).

¹² 12 U.S.C. § 1842(d)(2)(A) and (B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or branch. The Board considers a bank to be located in any state in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. § 1841(o)(4)-(7).

¹³ 205 Ill. Comp. Stat. § 5/21.2 (five years).

¹⁴ See Ind. Code § 28-2-17. Wisconsin has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of Wisconsin or

On consummation of the proposed transaction, Old National would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Of the states in which Old National and First Midwest have overlapping banking operations, Illinois and Wisconsin each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁵ The combined organization would control approximately 2 percent and 1 percent of the total amount of in-state deposits of insured depository institutions in Illinois and Wisconsin, respectively. Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁶ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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 communities to be served.¹⁷

Old National and First Midwest have subsidiary banks that compete directly in the Milwaukee, Wisconsin (“Milwaukee”), and Danville, Illinois (“Danville”),

is organized under federal law and has its principal place of business in Wisconsin. See Wis. Stat. Ann. § 221.0901(8). Similarly, Iowa has a minimum age requirement that applies only to a bank with its principal place of business or main office in that state. See Iowa Code § 524.1805. These minimum age requirements are not applicable to the proposed transaction because FMB is a bank organized under the laws of Illinois and does not have its principal place of business or main office in Iowa.

¹⁵ 205 Ill. Comp. Stat. Ann. §§ 5/21.3, 10/3.09; Wis. Stat. Ann. § 221.0901(7). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁶ 12 U.S.C. § 1842(c)(1)(A).

¹⁷ 12 U.S.C. § 1842(c)(1)(B).

banking markets.¹⁸ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the market (“market deposits”) that Old National would control;¹⁹ 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 (“DOJ”) Bank Merger Competitive Review guidelines (“DOJ

¹⁸ The Milwaukee banking market is defined as Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties; the East Troy township in Walworth County; the Somers, Paris, Brighton, and Wheatland townships in Kenosha County; Jefferson County, except the Waterloo, Lake Mills, Oakland, and Sumner townships; the Ashford and Auburn townships in Fond du Lac County; and the eastern half of Dodge County, all in Wisconsin. The Danville banking market is defined, in Illinois, as Vermillion County, except the Butler and Grant townships, and, in Indiana, as the Jordan, Steuben, Kent, and Mound townships in Warren County, and the Highland, Eugene, and Vermillion townships in Vermillion County.

¹⁹ Local deposit and market share data are as of June 30, 2021, 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 to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); and 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). In some markets noted in this order, the market concentration and market share are based on calculations in which the deposits of certain thrift institutions are weighted at 100 percent. The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989). In evaluating when it is appropriate to increase the weighting of a thrift’s deposits in a banking market, the Board considers whether the thrift serves as a significant source of commercial loans in the market and provides a broad range of consumer, mortgage, and other banking products. See, e.g., The PNC Financial Services Group, Inc., 95 Federal Reserve Bulletin B1 (2009); The PNC Financial Services Group, Inc., 93 Federal Reserve Bulletin C65 (2007); and First Union Corporation, 84 Federal Reserve Bulletin 489 (1998).

Bank Merger Guidelines”);²⁰ the number of competitors that would remain in the market; and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Milwaukee market. On consummation, the Milwaukee market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in the market.²¹

In the Danville banking market, the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data. First Midwest is the 3rd largest insured depository

²⁰ In applying the DOJ Bank Merger Guidelines issued in 1995 ([see https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995](https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995)), the Board looks to the DOJ’s Horizontal Merger Guidelines, issued in 1992 and amended in 1997, for the characterization of a market’s concentration. [See https://www.justice.gov/atr/horizontal-merger-guidelines-0](https://www.justice.gov/atr/horizontal-merger-guidelines-0). Under these Horizontal Merger Guidelines, which were in effect prior to 2010, 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 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 the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 ([see https://www.justice.gov/atr/horizontal-merger-guidelines-08192010](https://www.justice.gov/atr/horizontal-merger-guidelines-08192010)), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. [See Press Release, Department of Justice \(August 19, 2010\), available at https://www.justice.gov/opa/pr/2010/August/10-at-938.html](https://www.justice.gov/opa/pr/2010/August/10-at-938.html).

²¹ Old National is the 34th largest depository organization in the Milwaukee market, controlling approximately \$207.2 million in deposits, which represent less than 1 percent of market deposits. First Midwest is the 11th largest depository organization in the market, controlling deposits of approximately \$1.2 billion, which represent less than 2 percent of market deposits. On consummation of the proposed transaction, Old National would become the 10th largest depository organization in the market, controlling deposits of approximately \$1.4 billion, which would represent less than 2 percent of market deposits. The HHI for the Milwaukee market would increase 1 point, from 1764 to 1765, and 55 competitors would remain in the market.

organization in the Danville market, controlling approximately \$167.5 million in deposits, which represent 15.1 percent of market deposits. Old National is the 2nd largest insured depository organization in the market, controlling approximately \$196.4 million in deposits, which represent 17.7 percent of market deposits. On consummation, Old National would be the largest insured depository organization in the market, controlling approximately \$364 million in deposits, which represent 32.8 percent of market deposits. The HHI in the market would increase 535 points, from 1350 to 1885.

The Board has considered whether there are any factors that would either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Danville banking market.²² The Board specifically has considered whether three credit unions in the market would merit inclusion at higher weights. Each of these credit unions is open to at least 75 percent of residents in the market, maintains street-level branches, and offers a broad range of banking products.²³ The Board finds that the deposits of each credit union with these characteristics should be included at a 50 percent weight in estimating the credit union's market influence (each a "qualifying credit union"). This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the level of concentration in the Danville banking market following the proposed transaction would be less significant than would appear from the initial competitive screening data. After consummation and adjusting to

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

²³ The Board has previously considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., Huntington Bancshares Incorporated, FRB Order No. 2021-07 (May 25, 2021); Huntington Bancshares Incorporated, FRB Order No. 2016-13 (July 29, 2016); BB&T Corporation, FRB Order No. 2015-18 (July 7, 2015); and Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006).

reflect competition from the qualifying credit unions in the market, the level of concentration in the Danville banking market as measured by the HHI would increase by 382 points, from 1286 to 1668, and the market share of Old National would increase to 27.7 percent. Sixteen other depository institutions, including the qualifying credit unions, would remain in the market, as well as one depository institution with a market share of approximately 20 percent and another with a market share of approximately 19 percent.²⁴

Conclusion Regarding Competitive Effects

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in the Danville market or in any other 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 Milwaukee or Danville markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money

²⁴ These market concentration and market share calculations include the weighting of deposits controlled by one thrift institution in the market at 100 percent. This thrift appears to be an active commercial lender and has a ratio of commercial and industrial loans to assets of at least 5 percent. The Board has found that the deposits of thrifts that exhibit these characteristics should be included at a 100 percent weight in calculating the estimate of market influence. See The PNC Financial Services Group, Inc., 95 Federal Reserve Bulletin B1 (2009).

laundering, and any public comments on the proposal.²⁵ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction and any public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, 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 to effectively complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Old National, First Midwest, and their respective subsidiary depository institutions are well capitalized, and the combined organization would remain so upon consummation of the proposal. The proposed transaction is a bank holding company acquisition that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.²⁶ The capital, asset quality, earnings, and liquidity of Old National, First Midwest, and their subsidiary depository institutions are consistent with approval, and Old National appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

²⁵ 12 U.S.C. § 1842(c)(2), (5), and (6).

²⁶ Old National has the financial resources to effect the proposed transaction.

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 Old National, First Midwest, and their respective subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Old National; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and the public comments received on the proposal.

Old National, First Midwest, and each of their respective subsidiary depository institutions are considered to be well managed. Old National's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Old National's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Old National's plans for implementing the proposal. Old National has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. In addition, Old National's management has the experience and resources to operate the resulting organization in a safe and sound manner.

Based on all of the facts of record, including Old National's supervisory record, managerial and operational resources, and plans for operating the combined organization after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Old National and First Midwest in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁷ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities. The Board considers and places particular emphasis on the records of the relevant depository institutions under the CRA. 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 the institutions' safe and sound operation,²⁸ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁹

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the acquiring institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA

²⁷ 12 U.S.C. § 1842(c)(2).

²⁸ 12 U.S.C. § 2901(b).

²⁹ 12 U.S.C. § 2903.

performance of ONB and FMB; the fair lending and compliance records of these banks; the supervisory views of the OCC, the Federal Reserve Bank of St. Louis (“St. Louis Reserve Bank”), the Federal Reserve Bank of Chicago (“Chicago Reserve Bank”), and the Consumer Financial Protection Bureau (“CFPB”); confidential supervisory information; information provided by Old National; and the public comments received on the proposal.

Public Comments on the Proposal

The Board received four comments expressing support for the proposal. Of these, three commenters described ONB’s volunteer work and community initiatives in southwest Indiana, such as ONB’s participation in nonprofit fundraisers and its contribution to the economic revitalization of downtown Evansville, Indiana. The fourth commenter stated that FMB has been a generous sponsor of small business development and job creation programs in northwest Indiana.

The Board received three comments opposing the proposal, two of which ultimately were withdrawn.³⁰ The remaining commenter alleged that in Indiana, in 2019,

³⁰ One of these commenters alleged that ONB trailed its peers in home purchase lending and small business lending to LMI borrowers and non-white individuals in several of its CRA assessment areas (“AAs”). The commenter also alleged that FMB trailed its peers in lending to small businesses in the Chicago metropolitan statistical area (“MSA”). This commenter withdrew its comment after ONB announced an agreement with the commenter to take certain actions and make certain investments in the combined bank’s footprint following the proposed transaction to address the needs of the communities to be served. The other commenter alleged that ONB engaged in redlining in lending and branching in Indianapolis, Indiana. During the pendency of the application, this commenter filed a lawsuit against ONB based on these same allegations. ONB and the commenter reached a settlement agreement in December 2021, and the lawsuit was dismissed. As part of the settlement agreement, ONB agreed to work with the commenter to open additional branches in majority-minority census tracts, commit funds to a loan subsidy fund, and provide support for community organizations based in majority-minority areas of Indianapolis, Indiana. In addition, the commenter withdrew its opposition to the application. Notwithstanding withdrawal of these comments and settlement of the lawsuit, the Board considered the assertions of these commenters in evaluating the convenience and needs factor and consulted with the OCC, the primary

as a result of the bank's disparate marketing, ONB made fewer home loans to and had a higher denial rate for African American individuals as compared to white individuals. The commenter alleged a similar racial disparity in the rate of home loans made to African Americans in Indiana and Minnesota in 2020.³¹ In addition, the commenter asserted that the proposal has no public benefit.

Businesses of the Involved Institutions and Response to the Public Comments

Through its branches in Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin, ONB offers consumer and commercial loan and deposit products, wealth and treasury management services, and business banking products. These products and services include a wide range of checking, savings, and money market deposit accounts, as well as credit products, such as home equity, construction, automobile, boat, student, credit card, and commercial loans. Through its branches in Illinois, Indiana, Iowa, and Wisconsin, FMB offers a variety of commercial and consumer loan products, including commercial and home mortgage loans, as well as a corporate banking platform. FMB also provides a variety of deposit services, including checking, savings, and money market deposit accounts, individual retirement accounts, and certificates of deposit, as well as business checking services. In addition, FMB provides equipment financing through a wholly owned subsidiary. Both banks offer internet banking and mobile banking services.

In response to the comments, Old National asserts that ONB and FMB are each committed to supporting all the communities they respectively serve through a breadth of programs, products, and activities that meet those communities' existing and anticipated credit needs, including those of LMI individuals and census tracts, as well as

supervisor of ONB, regarding the assertions and ONB's consumer compliance, including fair lending, record.

³¹ The data cited by the commenter appear to correspond to publicly available 2019 and 2020 data reported by ONB under the Home Mortgage Disclosure Act of 1975 ("HMDA"). 12 U.S.C. § 2801 *et seq.*

non-white individuals. Old National represents that ONB and FMB actively engage with community leaders, government entities, and residents to assess the needs of their communities and implement strategies to meet those needs. For example, Old National represents that ONB employs a team that engages with organizations and leaders to assess community needs, with a special emphasis on serving LMI populations and underrepresented groups. Similarly, Old National represents that FMB works closely with community partners to understand and be responsive to the financial needs of its communities. Old National asserts that the combined bank would continue to emphasize the importance of the CRA and meeting the needs of its communities through active engagement, products, services, and investments in its communities.

Old National represents that ONB markets its products and services to meet the credit needs of the communities in which it operates, including those of African American consumers. For example, Old National asserts that, during 2020, ONB instituted a primarily digital lending-based marketing approach throughout its geographic footprint. Old National represents that more than half of the money spent on this marketing campaign was targeted to majority-minority census tracts. Old National also represents that both ONB and FMB are fully committed and responsive to the needs of small businesses in their communities.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation and the supervisory views of relevant federal financial supervisors, which in this case are the OCC, with respect to ONB, and the Chicago Reserve Bank, with respect to FMB.³² In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to

³² See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48,506, 48,548 (July 25, 2016).

meet the credit needs of its entire community, including LMI neighborhoods.³³ 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 by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large banks, such as ONB and FMB, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁴ (4) the institution's

³³ 12 U.S.C. § 2906.

³⁴ Examiners also consider the number and amounts of small business and small farm loans made to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.³⁵ The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.³⁶

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial, ethnic, or gender groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions may not be available from public HMDA data.³⁷ Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

CRA Performance of ONB

ONB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of October 7, 2019 ("ONB Evaluation").³⁸

³⁵ See 12 CFR 228.22(b).

³⁶ See 12 CFR 228.21 *et seq.*

³⁷ Other information relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁸ The ONB Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loan data from January 1, 2016, through December 31, 2018. Examiners did not separately evaluate multifamily loans because they are not a primary loan product of ONB; however, such loans were evaluated as part of the Lending Test if they met the definition of a community development loan.

The bank received “High Satisfactory” ratings for the Lending and Service Tests, and an “Outstanding” rating for the Investment Test.³⁹

With respect to the Lending Test, examiners assigned a rating of “Outstanding” for the Evansville AA and a rating of “High Satisfactory” for the Louisville AA. Examiners assigned overall ratings of “High Satisfactory” for the states of Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin.⁴⁰ These areas were of particular concern to one of the commenters.

In the Evansville AA, examiners found that ONB’s responsiveness to credit needs was excellent, geographic distribution of loans was excellent, and distribution of loans among individuals of different income levels was adequate. In Michigan, which includes the Grand Rapids and Ann Arbor AAs, examiners determined that ONB’s responsiveness to credit needs was good, geographic distribution of loans was adequate, and distribution of loans among individuals of different income levels was good. In Indiana, which includes the Indianapolis AA, examiners found that the bank’s

Examiners evaluated the Investment and Service Tests from January 1, 2016, through December 31, 2018.

³⁹ The ONB Evaluation involved a full-scope review of the bank’s activities in Posey and Vanderburgh Counties (Indiana) and Henderson County (Kentucky) within the Evansville IN-KY multistate MSA (“Evansville AA”); Jefferson County (Kentucky) and Clark County (Indiana) within the Louisville KY-IN multistate MSA (“Louisville AA”); the Danville MSA (“Danville AA”) within the state of Illinois; the Bloomington MSA, Indianapolis-Carmel-Anderson MSA (“Indianapolis AA”), Muncie MSA, and Indiana Non-MSA within the state of Indiana; the Owensboro MSA within the state of Kentucky; the Ann Arbor MSA (“Ann Arbor AA”), Grand Rapids MSA (“Grand Rapids AA”), Kalamazoo-Portage MSA, and the Michigan non-MSA, within the state of Michigan; the Minneapolis-St. Paul-Bloomington MSA (“Minneapolis AA”) within the state of Minnesota; and the Appleton and Madison MSAs, as well as the Wisconsin non-MSA, within the state of Wisconsin. In addition, the ONB Evaluation involved a full-scope review of the bank’s performance in Arkansas, which was based primarily on the bank’s Fayetteville-Springdale-Rogers, Arkansas, MSA AA.

⁴⁰ Examiners noted that the Evansville AA and states of Indiana, Michigan, and Wisconsin carried the greatest weight in the CRA evaluation because these areas represented ONB’s most significant markets in terms of deposit concentration, branch distribution, and reportable loans.

responsiveness to credit needs was adequate, overall lending activity and geographic distribution of loans was good, and distribution of loans among individuals of different income levels was excellent. In Minnesota, which includes the Minneapolis AA, examiners found that the bank's responsiveness to credit needs was adequate, geographic distribution of loans was good, and distribution of loans to borrowers of different income levels was adequate. In the Louisville AA, examiners found that the bank's responsiveness to credit needs, geographic distribution of loans, and distribution of loans to individuals of different income levels were each adequate.

In the Evansville and Louisville AAs, as well as in the states of Indiana and Michigan, examiners found that ONB made little use of innovative and/or flexible lending practices to serve the credit needs of its AAs. Examiners determined that the bank occasionally used innovative and/or complex investments to support community development initiatives in the Evansville AA.

With respect to the Investment Test, examiners assigned ratings of "Outstanding" for the Evansville and Louisville AAs. Examiners assigned overall ratings of "Outstanding" for the states of Indiana, Michigan, and Minnesota; "High Satisfactory" for Kentucky and Wisconsin; and "Needs to Improve" for Illinois.

In Illinois, which includes the Danville AA, an area of concern to a commenter, examiners found that ONB had a poor level of qualified community development investments and grants. Nevertheless, ONB provided several examples of its recent efforts to improve its level of community development investments and grants in the Danville AA, such as grants to the Danville Area Community College and the St. James Church Food Pantry.

With respect to the Service Test, examiners assigned ratings of "Outstanding" for the Evansville and Louisville AAs. Examiners assigned overall ratings of "High Satisfactory" for the states of Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin. Examiners found that ONB's services did not vary in any way that inconvenienced portions of the bank's AAs, particularly with respect to LMI geographies and individuals. Examiners also found that the bank had a significant level of community

development services in the Evansville AA and a relatively high level of community development services in the Louisville AA, as well as in the states of Illinois, Indiana, Kentucky, Michigan, Minnesota, and Wisconsin.

CRA Performance of FMB

FMB received an overall rating of “Outstanding” at its most recent CRA performance evaluation by the Chicago Reserve Bank, as of September 30, 2019 (“FMB Evaluation”).⁴¹ The bank received “Outstanding” ratings for the Lending, Investment, and Service Tests.⁴²

With respect to the Lending Test, examiners found that FMB’s lending levels reflected excellent responsiveness to the credit needs of its AAs, based on the number and amount of home mortgage, small business, and small farm loans in the bank’s AAs. Examiners noted that a high percentage of loans were made, and that there was an excellent geographic distribution of loans, within the bank’s AAs. Examiners also found that the distribution of loans among individuals of different income levels and businesses and farms of different sizes, particularly in the bank’s AAs, was good. Examiners determined that FMB exhibited an excellent record of serving the credit needs

⁴¹ The FMB Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed the percentage and geographic distribution of home mortgage, small business, and small farm lending originated in FMB’s AAs from January 1, 2017, through December 31, 2018. Examiners reviewed the distribution of home mortgage, small business, and small farm loans among borrowers of different income and revenue levels from January 1, 2017, through December 31, 2018. Examiners reviewed the number, volume, innovativeness, and complexity of community development loans, as well as qualified investments, grants, and donations, from May 2, 2017, through September 30, 2019. Examiners reviewed the bank’s distribution of branch offices, banking services, hours of operation, availability of loan and deposit products, and the extent and innovativeness of community development services from May 2, 2017, through September 30, 2019.

⁴² The FMB Evaluation involved a full-scope review of the bank’s activity in certain metropolitan divisions of the Chicago-Naperville-Elgin IL-IN-WI MSA (“Chicago AA”); Scott and Rock Island Counties within the Davenport-Moline-Rock Island IA-IL MSA; and Champaign County of the Champaign-Urbana, IL, MSA.

of highly economically disadvantaged portions of its AAs, demonstrated an extensive use of innovative and flexible lending practices to address the credit needs of LMI individuals and geographies, and was a leader in making community development loans.

In the Chicago AA, which includes the Chicago MSA, an area of concern to a commenter, examiners assigned FMB a rating of “Outstanding” for the Lending Test. Examiners found that FMB’s lending activity in the Chicago AA reflected excellent responsiveness to the AA’s credit needs and that the bank displayed an excellent geographic distribution of loans in the AA. Examiners determined that FMB demonstrated a good distribution of loans among individuals of different income levels and businesses and farms of different sizes. Examiners found that the bank exhibited an excellent record of serving the credit needs of highly economically disadvantaged areas, as well as low-income individuals, in the AA. Examiners determined that FMB demonstrated an extensive use of innovative and flexible practices to address the credit needs of LMI individuals and geographies and that the bank was a leader in making community development loans.

With respect to the Investment Test, examiners found that FMB provided an excellent level of qualified investments, particularly those not routinely provided by private investors, and often in a leadership position. Examiners also determined that the bank made significant use of innovative or complex qualified investments to support community development initiatives and exhibited excellent responsiveness to credit and community development needs.

With respect to the Service Test, examiners found that FMB’s delivery systems were readily accessible to geographies and individuals of different income levels in the bank’s AAs and that the bank’s record of opening and closing branches improved the accessibility of the bank’s delivery systems, particularly in LMI geographies and for LMI individuals. Examiners determined that FMB’s services were tailored to the convenience and needs of its AAs, particularly in LMI geographies and for LMI individuals. Examiners also found that the bank provided a relatively high level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with and considered the views of the OCC, as the primary federal supervisor of ONB; the Chicago Reserve Bank, as the primary federal supervisor of FMB; and the CFPB, regarding the CRA, consumer compliance, and fair lending records of ONB and FMB. The Board also considered the results of the most recent consumer compliance examinations of ONB and FMB, which included reviews of the banks' compliance management programs and compliance with consumer protection laws and regulations.

In acting on the bank merger application, the OCC considered similar statutory factors under the Bank Merger Act, including those regarding convenience and needs, that the Board must consider under the BHC Act. The OCC considered most of the same comments that the Board received on the BHC Act application in reviewing and approving the Bank Merger Act application.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether Old National has the experience and resources to ensure that the combined bank would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Old National represents that the proposal would enable the combined bank to provide enhanced consumer and commercial banking services and products in a more efficient manner, as well as a larger branch and ATM network for customer use. Old National also represents that customers would benefit from the technical expertise and combined resources of both banks in a number of product and service areas, including consumer and commercial credit, deposit services, specialty lending segments, treasury services, wealth management, private banking, and other related services and resources. For example, Old National asserts that

customers in FMB’s legacy geographic footprint would benefit from the additional geographic reach of ONB and its strong Small Business Administration, mortgage, and treasury management capabilities. Similarly, Old National asserts that customers in ONB’s legacy footprint would benefit from FMB’s strong corporate banking platform, expertise in certain specialty lending niches, including healthcare, and leasing and structured lending capabilities. Old National also asserts that the proposal would result in enhanced online application and account-opening functionality and real-time digital peer-to-peer payments. Old National represents that the combined bank would evaluate its products and services with the goal of ensuring that they are no less favorable to customers than those currently offered by each bank, designed to meet the credit and banking needs of the combined bank’s communities, and highly competitive with offerings from other banks in the combined bank’s markets.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions’ records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Old National, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs considerations are consistent with approval.

Financial Stability Considerations

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”⁴³

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that

⁴³ 12 U.S.C. § 1842(c)(7).

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.⁴⁴ 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 opacity 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 on the broader economy.⁴⁵

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets, generally are not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁶

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a

⁴⁴ Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴⁵ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

⁴⁶ See People’s United Financial, Inc., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.⁴⁷ The pro forma organization would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴⁸ In reaching its conclusion, the

⁴⁷ Old National and First Midwest offer a range of retail and commercial banking products and services. Old National has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

⁴⁸ Two commenters requested that the Board hold public hearings on the proposal. Under section 3(b) of the BHC Act, the Board must hold a public hearing on a proposal if the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 12 U.S.C. § 1842(b). See also 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board, in its discretion, may hold a public meeting if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' request in light of all the facts of record. In the Board's view, the 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 commenters' requests do not identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the requests do not demonstrate why written

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 Old National with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by Old National 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 15th 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 St. Louis Reserve Bank, acting under delegated authority.

By order of the Board of Governors,⁴⁹ effective January 27, 2022.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

comments do not present the commenters' 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 requests for public hearings on the proposal are denied.

⁴⁹ Voting for this action: Chair Powell and Governors Bowman, Brainard, and Waller.