



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #97-96
November 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
SIGNET BANK, RICHMOND, VIRGINIA,
WITH AND INTO FIRST UNION NATIONAL BANK, CHARLOTTE, NORTH
CAROLINA
November 9, 1997**

I. INTRODUCTION

On August 14, 1997, First Union National Bank, Charlotte, North Carolina (FUNB) filed an Application with the Office of the Comptroller of the Currency (OCC) for approval to merge Signet Bank, Richmond, Virginia (Signet) with and into FUNB under FUNB's charter and title, pursuant to 12 U.S.C. §§ 215a-1, 1828(c), and 1831u (the "Merger Application"). Signet is an insured bank chartered by the state of Virginia, with its main office in Richmond, Virginia, and branches in Virginia, Maryland, and the District of Columbia. FUNB is an insured national bank with its main office in Charlotte, North Carolina. FUNB and Signet are wholly-owned subsidiaries of First Union Corporation (First Union), a registered multibank holding company organized under the laws of North Carolina.¹ FUNB currently has branches in Connecticut, Florida, Georgia, South Carolina, Tennessee, Virginia, Maryland, and the District of Columbia. In the Merger Application, OCC approval is also requested for the resulting bank to retain FUNB'S main office as the main office of the resulting bank under 12 U.S.C. § 1831u(d)(1) and to retain FUNB's branches and Signets' main office and branches as branches after the merger under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

II. LEGAL AUTHORITY

A. The Interstate Merger is Authorized under 12 U.S.C. §§ 215a-1 & 1831u.

In 1994, Congress enacted legislation to create a framework for interstate mergers and branching by banks. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,

¹ In a separate transaction, immediately prior to the merger of FUNB and Signet, Signet Banking Corporation will merge with and into First Union. As a result, Signet will be an affiliate of FUNB at the time of its merger into FUNB.

Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the Riegle-Neal Act). The Riegle-Neal Act added a new section 44 to the Federal Deposit Insurance Act that authorizes certain interstate merger transactions beginning on June 1, 1997. See Riegle-Neal Act § 102(a) (adding new section 44, 12 U.S.C. § 1831u). It also made conforming amendments to the provisions on mergers and consolidations of national banks to permit national banks to engage in such section 44 interstate merger transactions. See Riegle-Neal Act § 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1). It also added a similar conforming amendment to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act § 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)).

Section 44 authorizes mergers between banks with different home states:

(1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1). The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws).² In this Merger Application, FUNB and Signet's home states are North Carolina and Virginia, respectively; neither of which has opted out. Accordingly, this Merger Application may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).³

In addition, an application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b) of the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and

² For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

³ This merger may also be authorized under 12 U.S.C. § 215a. This transaction is a merger between an interstate national bank and another bank in states in which the interstate bank already has branches. The OCC previously has considered such applications under sections 215a, with branch retention under section 36(b). See Decision on the Applications to Merge Boatmen's Bank of Vandalia, Vandalia, Missouri, and Twenty-two Other Affiliated Banks with and into Nationsbank, National Association, Charlotte, North Carolina (OCC Corporate Decision No. 97-47, June 6, 1997 at 8-13).

state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills.

FUNB's Merger Application satisfies all these conditions to the extent applicable. First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). In this Merger Application, FUNB is acquiring by merger a bank in the host state of Virginia. Virginia does not have an age requirement. See Va. Code Ann. § 6.1-44.18. Thus, the Merger Application satisfies the Riegle-Neal Act's requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. FUNB already is located in Virginia, Maryland, and the District of Columbia; consequently no host state will result from this transaction. Therefore, FUNB is not required to comply with state filing requirements.⁴

Third, the proposed interstate merger transactions do not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. See 12 U.S.C. § 1831u(b)(2)(E). FUNB and Signet are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act (CRA), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3). However, this provision does not apply to this merger transaction because it applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate

⁴ Nonetheless, FUNB has supplied copies of its application to the States of Virginia and Maryland, and the District of Columbia.

immediately before the transaction." 12 U.S.C. § 1831u(b)(3). See also H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this Merger Application, FUNB already has bank affiliates in Virginia, Maryland, and the District of Columbia and is also not otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal Act provision is not applicable to the Merger Application. However, the Community Reinvestment Act itself is applicable, as discussed below, see Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. See 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, FUNB and Signet satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, FUNB will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

Accordingly, the proposed interstate merger transaction is legally permissible under section 1831u.⁵

B. Following the Merger, the Resulting Bank may Retain Signet's Main Office and Branches as Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

⁵ Signet currently has a number of subsidiaries. By operation of the merger some will become subsidiaries of FUNB, see 12 U.S.C. § 215a(e). Six subsidiaries engage in activities previously approved for FUNB. Signet has five subsidiaries that will be dissolved prior to the merger, and one inactive loan production office subsidiary that FUNB has not decided whether to reactivate yet. In addition to these subsidiaries, Signet has subsidiaries that engage in activities not previously approved for FUNB. Signet Bank (Bahamas) Limited (SBB) is a foreign bank subsidiary of Signet chartered in the Bahamas. SBB has no physical presence in the Bahamas and is not permitted to engage in banking activities with Bahamian residents or to accept deposit denominated in Bahamian currency. At this time SBB is not engaging in banking activities, and its sole asset is a repurchase agreement with its parent. FUNB notified the OCC of its intent to acquire this company, pursuant to 12 CFR § 28.3, and has submitted an application with the Federal Reserve Board of Richmond to acquire SBB, pursuant to 12 CFR 211.5(c)(4). The other subsidiaries engaging in activities not previously approved for FUNB are the Pioneer Development Corporation, Pioneer Properties I, Inc., and PFR Corporation (collectively known as Pioneer Companies). Pioneer Companies were acquired by Signet on August 31, 1994 through the acquisition of Pioneer Financial Corporation (Pioneer) and its banking subsidiary Pioneer Federal Savings Bank. At that time Pioneer was engaged through various subsidiaries in certain real estate development activities. The Federal Reserve Board granted Signet a divestiture period (including a one-year extension) until August 31, 1997, and recently the Federal Reserve Board granted Signet an additional one-year extension until August 31, 1998. The subsidiaries are not currently actively engaging in real estate development activities other than the divestiture of nonconforming assets. OCC policy allows acquiring banks in a merger a reasonable time to divest or conform nonconforming assets. See 12 CFR § 5.33(e)(5). FUNB has stated that it will divest itself of the nonconforming subsidiaries by August 31, 1998. If FUNB is unable to divest itself of these subsidiaries within the year, it plans to transfer these subsidiaries to First Union Development Corporation, a nonbank affiliate of FUNB that has grandfathered authority to engage in real estate development activities.

The Applicant has requested that, upon the completion of the merger, FUNB be permitted to retain and continue to operate its existing main office in Charlotte as the main office of the resulting bank and to retain and continue to operate as branches (1) its own existing branches, and (2) the main office and branches of Signet in Virginia, Maryland, and the District of Columbia. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks are expressly provided for:

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

(d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). Therefore, FUNB, the resulting bank in this interstate merger transaction, may retain and continue to operate all of the existing banking offices of FUNB and Signet under 12 U.S.C. §§ 36(d) & 1831u(d)(1).⁶

Moreover, at its current branches and main office, and the branches which were Signet banking offices prior to the merger, FUNB is authorized to engage in all activities permissible for national banks, including fiduciary activities. See, e.g., 12 U.S.C. §§ 215a-1 (Riegle-Neal

⁶ By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. § 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Congress clearly was aware of the McFadden Act's existing provisions for branch retention in mergers at the time it acted on Section 44 and the way in which those provisions applied for interstate national banks, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. See H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions apply to branch retention in interstate merger transactions under section 1831u, rather than the complex branch retention provisions of section 36(b)(2). Of course, section 36(b)(2) continues to govern branch retention in national bank mergers that are not entered into under section 1831u, including mergers involving an interstate bank (such as a merger of an interstate bank into another national bank in its home state).

mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act), 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks), & 1831u(d)(1) (continued operations at retained interstate branches). See also OCC Interpretive Letter No. 695 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). Cf. 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

1. Competitive Analysis

Because FUNB and Signet are owned by the same bank holding company, their merger would have no anticompetitive effect. For discussion of comments relating to the competitive effect of this proposal, see Part III.B, below.

2. Financial and Managerial Resources

The financial and managerial resources of both banks are presently satisfactory. FUNB expects to achieve administrative efficiencies by operating the offices as branches, rather than as a separate corporate entity. The geographic diversification of its operations will strengthen the resulting bank. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the merger application. For discussion of comments relating to the financial and managerial resources factor, see Part III.B, below.

3. Convenience and Needs

FUNB will help to meet the convenience and needs of the communities to be served. FUNB will continue to serve the same areas in Connecticut, Florida, Georgia, South Carolina, Tennessee, Virginia, Maryland, and the District of Columbia, and it will add Signet's offices in Maryland, Virginia, and the District of Columbia. Both FUNB and Signet currently offer a full line of banking services, and there will be no reductions in the products or services available from FUNB following the consolidation.

In addition, the OCC has considered First Union's representation to the OCC that it has adopted a plan affecting how it will meet community credit needs in Maryland, Virginia, and the District of Columbia over the next three years. Under this plan, First Union will commit \$2 billion to community reinvestment activities in these jurisdictions over the three-year period. The plan contemplates that the \$2 billion commitment will be allocated among affordable mortgage loans (\$525 million), home improvement and other consumer lending in low- and moderate-income (LMI) areas (\$450 million), small business and small farm loans and loans to minority- and women-owned businesses (\$600 million), and community development loans (\$375 million). In addition, the plan calls for First Union to make \$50 million in affordable housing loans and investments, and includes other provisions relating to matters such as funding for community development financial institutions and financial support for community-based homeownership counseling programs.

i. Comments on Branch Closings

As described more fully below, the OCC received public comments on various aspects of the proposal, including comments relating to convenience and needs factors such as branch closings.

Some commenters contended that FUNB plans to close a large number of branches in connection with this proposal, including branches located in LMI areas, which would result in a substantial adverse effect on LMI communities.⁷ Commenters also argued that these branch closures would decrease access to credit for minorities and for residents of LMI neighborhoods, and generally reduce the availability of banking options and other financial services.⁸ Commenters also maintained that, in the past, FUNB has closed branches when entering new markets and in connection with acquisitions, and that the first branches to be closed are likely to be those in LMI areas.⁹ One commenter criticized FUNB's existing branch network in Washington, DC, and expressed concern that, as a result of the proposal, Signet branches in Washington, DC which serve predominantly minority communities might be closed. In general, commenters contended

⁷ Commenters also asserted that FUNB should be required to disclose its specific branch closing plans in connection with this proposal to enable a proper analysis of the convenience and needs factor in this case. The OCC has considered both public information on this subject and preliminary branch closing information submitted by FUNB on a confidential basis.

⁸ Commenters also contended that branch closings would result in both layoffs and higher fees for banking services. The effect of the proposal on employment and fees is discussed in further detail below.

⁹ One commenter stated that, in connection with a prior transaction, FUNB closed two branches in LMI areas notwithstanding significant public objections to the closures, and subsequently built new branches in suburban areas. The OCC has considered this comment in light of supervisory information about these particular closures and FUNB's overall record of opening and closing branches.

that First Union acqu
on the quality of banking services available in affected communities.

FUNB has pr
considered for closing
branch ures under the convenience and needs factor in this case, therefore, the OCC ha
carefully reviewed FUNB's
preliminary plans in this case, as well as the
ef of the potential branch closures in this case, the OCC has reviewed the branches in LM
are
branches within one mile of other facilities that will remain open as alternative sites
rvices to affected communities. The OCC also has considered the

As an initial matter, it is important to recognize the tentative nature o
branch closing plans in this case. F
cons for consolidation or closing was based solely on a geographic mapping of existin
branches of FUNB and Signet to determine whe
FUNB has not yet considered or appl
branch closing policy, and thus has
in connection with this proposal.

attempts to minimize any adverse effects on its assessment
onsolidations, or reductions in service. The bank has
to be closed, consider alternative
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plans to affected customers and communities
implementation to minimize any inconvenience and other adverse effects. In
osing policy sets forth a number of criteria to be used in evaluating
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acity and condition of the physical
and anticipated effect on income and expenses. The policy also contains a series o
pro to be followed when a branch is identified as a candidate for closure. These
procedures always involve community reinvestment personnel in t
in special procedures (which may include additional analysis, community contacts, or
re of need ascertainment calls) that are applicable when the branch is located in an LM
com FUNB has represented, in response to concerns about potential adverse effects o
branch gs in LMI areas, that when a branch in an LMI area is identified for potentia
closure, the decision undergoes rigorous revie

one commenter asserted that prior transactions have resulted in a significant reduction of the
deposits response to this allegation

of action. Further, as described more fully below, FUNB will conduct private meetings in advance of any LMI branch closing to discuss community concerns about the impact of such closing on the availability of banking services in the affected community.

The OCC also has considered examination findings relating to past branch closures by FUNB, whether resulting from acquisitions or otherwise. The OCC's 1994 examinations of FUNB's performance under the Community Reinvestment Act (CRA) (12 U.S.C. § 2901 *et seq.*) in Virginia and the District of Columbia, the areas of particular concern to commenters, found that FUNB had established and maintained branch locations that provided reasonable access to services offered by the bank. Examiners also found that FUNB has followed its branch closing policy, and that branch closures have not resulted in material adverse effects on LMI neighborhoods. The OCC also notes that, since January 1, 1996, while FUNB has closed some branches in moderate-income areas of Maryland, Virginia, and the District of Columbia, reducing slightly the percentage of branches in those areas, it has not closed any branches in low-income geographies. Since the completion of the 1994 exam, even though FUNB was generally pursuing a strategy of reducing the aggregate number of its branches, the bank opened a *de novo* branch in a low-income neighborhood in Washington, DC. Finally, in reviewing FUNB's public CRA file, the OCC found no complaints about FUNB's branch closings since the prior examination.

The OCC notes that Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1) requires that a bank provide advance notice to the public and its primary supervisor before closing a branch. Further, when an interstate bank, such as FUNB, proposes to close a branch in an LMI area, Section 42 provides an opportunity for a meeting among the supervisor, community leaders, and others to discuss the impact of the proposed branch closing on the availability of banking services in the area. The law does not authorize federal banking agencies to prevent the closing of any branch; however, the OCC also notes that FUNB's record of branch closures is being reviewed in the pending examination, and any that result from this proposal will be reviewed in future CRA examinations of FUNB.

These considerations, together with the application of FUNB's branch closing policy and procedures, should help to mitigate any adverse effect on LMI areas that might result from potential branch closures and consolidations in this case. Nevertheless, due to the size of this transaction and the correspondingly large number of LMI areas that could be affected by branch closings, and the fact that FUNB's plans for branch closings are, at this point in time, still tentative, the OCC believes that additional information from LMI communities regarding the impact of potential branch closings on the availability of banking services in those areas would help FUNB to ensure that the proposal would not have a negative effect on FUNB's ability to serve the convenience and needs of those communities. The OCC has found, for example, that the private meetings with commenters, described in Section III.B.1, below, were helpful in gaining a better understanding of their concerns, and, correspondingly, a better perspective on how to address them.

Accordingly, the OCC has determined that it would be appropriate and desirable, in addition to any public meetings convened under Section 42, in cases where comments received in response to FUNB's Section 42 branch closing notices issued in connection with this transaction assert that a branch closing in an LMI area would negatively impact the availability of banking services in that area, for FUNB to hold private meetings with those commenters. FUNB has committed to the OCC to hold such meetings, and the OCC has specifically considered that commitment in its analysis of the convenience and needs factors concerning this application.

ii. Other Convenience and Needs Comments

Commenters made several other comments concerning the effect of the proposal on the convenience and needs of the communities to be served. For example, commenters alleged that FUNB assesses high fees for a wide range of basic banking services, arguing that this is a practice with regressive effects that one commenter urged should reflect adversely on FUNB's performance under the service test of the revised CRA regulation. Commenters also maintained that fees would increase as a result of the proposed transaction.¹¹ In addition, commenters criticized FUNB's practice of fingerprinting persons without FUNB accounts who seek to cash checks at FUNB branches, as well as FUNB's continuation of this practice notwithstanding significant public opposition. FUNB states the policy was adopted as a protection against check fraud. Further, commenters have provided no evidence that this policy has been implemented in a discriminatory manner or that the policy violates any law.

Commenters raised the specific concern that FUNB discriminates in the provision of services and physical facilities in branches located in lower-income and minority areas compared to other branch locations. As noted in the discussion of FUNB's mortgage lending below, the OCC has no evidence that FUNB discriminates in its services or treatment of customers on the basis of race. Additionally, while the OCC does not evaluate an institution on the basis of the size or physical appearance of individual branches, length of teller lines, or similar criteria, OCC staff reviewed information concerning FUNB's listed hours and service and product offerings, and determined that there are no significant disparities among the full-service branches based on the income or racial characteristics of the area in which the branch is located.

One commenter also objected that FUNB did not provide information to the public on how it will market its low-cost checking program to low- and moderate-income communities. FUNB offers low cost checking accounts generally to its customers. FUNB has represented that it cannot disclose proprietary strategies concerning the marketing of retail products and that it offers low cost checking at all FUNB branch locations.

¹¹ The OCC evaluated this comment in light of FUNB's provision of low-cost banking products and the absence of any information to suggest that FUNB fee practices are or will be discriminatory or prohibited by law. FUNB's record of providing retail banking services is considered as part of its CRA performance which, for the reasons described below, is consistent with approval of this application. In addition, the acquisition of Signet has been found by the Board of Governors of the Federal Reserve System and the Department of Justice not to have an anticompetitive effect. Since an adequate number of alternative financial service providers will remain, fees should continue to reflect the effects of a competitive market.

B. The Community Reinvestment Act

In reaching its decision in this case, the OCC has carefully considered information relevant to the proposal, including public comments on the proposal, information from meetings convened by the OCC with individuals and community organizations concerning the application, and the records of performance of FUNB and Signet under the CRA.

The OCC carefully considered supervisory information about FUNB's record of CRA performance, including the 1994 performance evaluations of FUNB.¹² First Union National Bank of North Carolina, now FUNB, received an "Outstanding" CRA rating in the 1994 examination, and Signet received a "Satisfactory" rating as of January 15, 1996. In addition, the OCC considered data derived from a pending CRA examination of FUNB. Staff at OCC's Washington headquarters carefully reviewed information from the pending examination in evaluating the concerns raised by commenters.

1. Meetings on the Proposal

Notice of the application was published on August 4, 1997 in Richmond, Virginia and Charlotte, North Carolina.¹³ The statutory comment period ended on September 2, 1997. In response to various requests at different times, and to permit additional information to be developed in various meetings involving the public, the OCC, community organizations, and the bank, the OCC extended the period for commenters to submit additional information on a number of occasions, with the result of permitting the file for this application to remain open for comment from August 4 to October 31, 1997, a period of approximately three months.

During the extended comment period, commenters requested public hearings or public meetings to discuss the proposal. The OCC did not grant those requests but afforded the requesting community organizations the opportunity to meet with the OCC on a private basis to supplement their comments.

Between October 15 and 20, 1997, the OCC held three in-person private meetings on the proposal in New York, NY, Washington, DC, and Roanoke, VA. The OCC also conducted a

¹² The 1994 performance evaluations were prepared at the conclusion of the examination of eight affiliated national banks including First Union National Bank of Florida, First Union National Bank of Georgia, First Union National Bank of Maryland, First Union National Bank of North Carolina, First Union National Bank of South Carolina, First Union National Bank of Tennessee, First Union National Bank of Virginia, and First Union National Bank of Washington, DC. These institutions have now merged. In the 1994 evaluations, each constituent bank received at least a "Satisfactory" rating for CRA performance.

¹³ One commenter expressed concern that notice of the application had not been published in Washington, DC, a major market area involved in the proposal. FUNB complied with the statutory and regulatory requirements applicable to public notice for its application. See 12 U.S.C. § 1828(c)(3); 12 C.F.R. § 5.33(f)(1). The OCC notes that while a public notice was published in only one newspaper in the target bank's service area, the proposal received extensive media coverage. Notice of the application's filing was also available from the OCC's Weekly Bulletin which is accessible on the Internet.

meeting by conference call with a fourth community organization that submitted comments opposing the proposal.

2. Written Comments on the Proposal

A total of twelve parties submitted written comments. Five commenters expressed support for the proposal or favorable opinions about FUNB's CRA performance, five criticized the applicant's CRA performance or expressed concerns about possible adverse effects of the merger, and two municipal officials supported a commenter's request for a public hearing.

Commenters opposing this proposal raised a number of concerns based on the performance records of First Union's subsidiary banks under the CRA, the organization's compliance with fair lending laws, FUNB's plans to close branches in connection with this proposal (described above in the convenience and needs review), and other matters. The OCC has considered these and other concerns expressed by commenters in evaluating the CRA, convenience and needs, and other factors in this case.

a. CRA-Related Comments

Some commenters generally criticized FUNB's record of providing lending, investment, and other financial services to LMI and minority consumers, businesses, and neighborhoods, and contended that FUNB is decreasing its emphasis on serving these communities in favor of providing additional services for higher-income customers.¹⁴ Commenters also asserted that FUNB has not improved the CRA performance records of institutions it has acquired, and urged that FUNB be required to continue Signet's CRA programs.¹⁵

¹⁴ Commenters also criticized the extent of FUNB's contacts with community organizations. One commenter criticized the request of First Union Home Equity Bank, N.A. (FUHEB), to be treated as a limited purpose bank for purposes of CRA. On May 3, 1997, the OCC denied FUHEB's request for a limited purpose bank designation. The OCC notes that a limited purpose designation relates merely to the standards by which a bank will be examined for compliance with CRA, and not whether the institution is exempt from CRA.

¹⁵ Some commenters stated that they should be provided with, and allowed to comment on, the 1996 CRA small business lending data that FUNB reported to the Federal Financial Institutions Examination Council (FFIEC). The revised CRA regulations provide that data on small business lending must be reported to the FFIEC. Pursuant to the regulation, the FFIEC makes this information available to the public in aggregate form. The information was made public on September 30, 1997. Another commenter stated that FUNB does not have a loan product responsive to the needs of borrowers with disabilities. FUNB has advised the OCC that, in its ascertainment of community credit needs, it has not yet identified the need for special loan products for people with disabilities. However, FUNB has represented that it will explore this issue further, including discussing it directly with the commenter. Another commenter noted that both Signet and First Union received poor grades in a 1995 independent, non-regulatory analysis of mortgage lending based on Home Mortgage Disclosure Act (HMDA) (12 U.S.C. § 2801 *et seq.*) data in twenty large U.S. cities. The OCC separately reviews mortgage lending and HMDA data in its CRA and fair lending examinations. Another commenter expressed concern about specific community development projects in Roanoke. In reviewing this proposal, the OCC considered supervisory information concerning FUNB's overall CRA performance in Roanoke.

Commenters expressed the specific concern that the most recent public evaluation of FUNB is from a 1994 CRA examination. Commenters requested that the OCC withhold a decision on the application until the pending examination becomes publicly available and the commenters have had time to review and comment upon it. Commenters also stated that the pending examination should be performed under the new regulation.

The pending examination of the applicant commenced prior to July 1, 1997, the date on which all banks are subject to evaluation under the revised CRA regulation. FUNB did not elect to be evaluated under the new regulation. However, definitions in the revised 1997 regulation were effective July 1, 1995. OCC examiners, in conducting evaluations under the prior regulation during the transition period, are guided by the general principles underlying the revised regulation and its focus on bank performance.¹⁶ In light of the public comments and supervisory information concerning the bank's CRA record of performance that has been carefully considered by the OCC during the months that the record remained open for this proposal, the OCC has concluded that the factual record is sufficient to warrant a decision at this time and that the OCC need not defer consideration of the proposal until the pending examination is complete and the public evaluation is made available.¹⁷

¹⁶ Commenters stated that they had not been contacted by the OCC during the pending FUNB CRA exam and emphasized the importance of community contacts in helping examiners understand community credit needs. Although the OCC did consider information derived from community contacts (through review of community contact forms from other agencies and OCC district offices, review of public file information, and other mechanisms), it did not make specific contact with community representatives in the pending examination, and agrees with commenters that such communication is highly valuable. However, in connection with this proposal, the OCC has carefully considered all of the comments received during the extended comment period and from private meetings with community organizations, as well as the written materials concerning FUNB's CRA performance that were considered in connection with the pending examination.

¹⁷ Commenters also argued that FUNB has reported inaccurate data relating to the number of small business and home mortgage loans that it has made in low- and moderate-income areas in Washington, DC. For example, the commenters state that some loans reported to have been made in certain low-income census tracts were made in areas that are primarily commercial with little or no population reporting income. According to the commenter, FUNB erroneously claims to have made 55 small business loans for a total of \$9,363,000 in low-income areas of Washington, DC, when it actually made 28 small business loans in these areas for a total of \$3,694,000. The commenter also states that, out of 230 mortgage loans reported by FUNB in LMI census tracts in Washington, DC in 1996, approximately 32 loans were made in a low-income census tract that is rapidly gentrifying. The commenter suggests that this area should not be classified as "low-income". The commenter also asserts that FUNB made a total of only 16 mortgage loans in all other Washington LMI census tracts. The OCC has carefully reviewed data reported by FUNB, including a sampling of HMDA loan files to ensure that loans were attributed to the correct census tract. The OCC's review did not find evidence that FUNB has failed to comply with its data reporting requirements under the CRA and HMDA. The OCC believes that accurate reporting of HMDA data is essential to implementation of the CRA and fair lending laws, and will take into account information concerning any reporting errors as part of its ongoing supervisory process.

The OCC also considered comments that stated that FUNB has made no multifamily (or rehabilitation) loans in Washington, DC, in contrast to Signet's lending record.¹⁸ The OCC confirmed that the applicant does not offer permanent financing for multifamily residential projects within Washington, DC. However, FUNB has made investments in and loans to nonprofit organizations that provide financing for multifamily housing within Washington, DC, and also provides multifamily construction and rehabilitation financing.

Commenters also expressed concern about the elimination of Signet's lines of credit and its grant support to local nonprofit housing developers, as well as FUNB's community development and affordable mortgage efforts. FUNB has represented to the OCC that it will honor all existing Signet lines of credit to community development organizations and other borrowers until expiration, in accordance with their terms. FUNB also stated that it will honor Signet's multi-year contribution commitments to community organizations. In addition to the bank's representations, the OCC has considered FUNB's record of performance in helping to meet the credit needs of its communities, including LMI areas, in evaluating these comments. FUNB's activities in LMI areas, for example, include affordable mortgage programs for home purchases and home improvement loans.¹⁹ FUNB offers a variety of affordable mortgage products with low or zero percent down payment requirements, flexible underwriting criteria for borrowers who receive home buyers' counseling from an FUNB community partner group, and special programs for persons buying homes in LMI areas. On the basis of prior CRA examinations and other supervisory information, FUNB's overall CRA performance indicates that its established record of helping to meet the credit needs of its communities, including through community development lending and investments and affordable mortgage products, is consistent with approval.

b. Fair Lending and HMDA Comments

Commenters alleged that FUNB engages in racial discrimination in home mortgage lending, as evidenced by data it reported under HMDA, including denial disparity ratios between white and minority credit applicants, approval rates in minority areas, and FUNB's market share of loans to white and minority borrowers. Commenters also contended that Signet, and the home mortgage lending industry as a whole, has a lower denial disparity ratio and a better fair lending record than FUNB and its affiliates.²⁰ Some commenters also contended that the bank has not

¹⁸ Another commenter expressed concern over the loss of Signet as a provider of equity capital for affordable housing consortia in Virginia. FUNB has indicated that it promotes affordable housing in Virginia primarily through direct investments in projects, but that FUNB will honor commitments made by Signet, including in Virginia.

¹⁹One commenter stated that FUNB's affordable mortgage loan programs do not benefit low- and moderate-income individuals as fully as possible. This commenter stated that FUNB does not permit its 100% loan to value mortgage product to be used with a Federal Home Loan Bank interest rate subsidy without increasing the interest rate one percentage point. FUNB has advised the OCC that it does not impose a higher interest rate on affordable mortgage loan applicants who use a subsidy in connection with the loan.

²⁰ Some commenters also criticized the home mortgage lending record of Signet.

made progress in addressing problems in its fair lending record, and has failed to improve the fair lending records of the institutions it has acquired.

HMDA data provides information about a bank's mortgage lending activity that is useful, as preliminary information, to highlight potential lending discrimination problems. However, HMDA data alone is inadequate to provide a basis for concluding that a bank has violated the fair lending laws.²¹

FUNB's compliance with the Fair Housing and Equal Credit Opportunity Acts were evaluated in connection with the 1994 and pending CRA examinations. OCC examiners found no evidence that would result in a conclusion that FUNB has discriminated against applicants for mortgage loans on a prohibited basis.²² In addition, FUNB's CRA assessment areas do not reflect discrimination or arbitrarily exclude LMI tracts.

FUNB has instituted various measures to monitor its compliance with fair lending laws. For example, FUNB engaged in comparative analysis of loan files for self-evaluation purposes and has implemented comprehensive training programs to enhance fair lending compliance. In

²¹ One commenter stated that FUHEB, an affiliate of the applicant, evades HMDA and fair lending review by reporting 98% of its applications as "race not provided". The OCC carefully considered this commenter's concerns in light of the HMDA regulatory requirements. Federal Reserve Regulation C provides that race monitoring information need not be recorded if an applicant that submits an application by mail does not provide the information, and need not be requested in connection with an application that is taken entirely by telephone. The monitoring information must be recorded for applications made in person, either to a broker or a financial institution. In the course of investigating this matter, the OCC determined that there is, in fact, a significant error rate in FUHEB's gathering of HMDA monitoring data. FUHEB receives approximately 30% of its applications by mail or phone, with the remainder from brokers. It is estimated by FUHEB that one-half of the broker-originated applications involved in-person applications where either the broker failed to acquire the data or FUHEB failed to include the data recorded by the broker with its HMDA submission. First Union has begun a systematic evaluation of FUHEB's HMDA reporting activity, and has committed to take prompt corrective action to address deficiencies. As noted above, the OCC believes that accurate reporting of HMDA data is essential to implementation of the CRA and fair lending laws, and will take into account information concerning any reporting errors as part of its ongoing supervisory process. Another commenter suggested that FUNB may engage in discriminatory prescreening of credit applications. The OCC has found no evidence of this practice in its CRA or fair lending examinations.

²² One commenter stated that FUNB applicants with similar profiles (for example, income and employment and credit history) are more likely to be approved for a mortgage on property located in Prince George's County, Maryland than for a property in Washington, DC. The OCC did not find, on the basis of its recent fair lending compliance examination, that there is evidence of discrimination on a prohibited basis by FUNB in its operations in Maryland and Washington, DC. Another commenter stated that HMDA data for FUNB's state bank affiliate in Delaware indicates discriminatory lending practices. While the OCC reviewed FUNB's fair lending record, it does not have supervisory information concerning the fair lending records of affiliated state banks, which are not parties to the application. The OCC notes, however, that First Union Bank of Delaware received a "Satisfactory" CRA rating from its primary supervisor, the FDIC, at its most recent examination in April 1995. Examiners found no evidence of lending discrimination at that examination. Finally, a commenter criticized FUNB's relationship with an unaffiliated finance company which, according to the commenter, charges high interest rates and targets poor and minority communities. The commenter stated that FUNB's CRA performance should be adversely affected by its business with the finance company. The OCC has determined that the finance company is only a commercial loan customer of FUNB.

addition, FUNB uses a second review process for denials of all mortgage and a wide range of consumer credit applications.

c. Other Comments

Commenters also alleged that consummation of this proposal would be anticompetitive and provide FUNB with market power in Virginia, particularly in Roanoke. In this regard, commenters contended that the geographic market for small business lending in Roanoke should be smaller than the market defined by the Federal Reserve System. Commenters maintained that FUNB's market power would reinforce FUNB's disregard for LMI and minority customers, who would be left with fewer financial service options upon consummation of the proposal.

The competitive aspects of First Union's acquisition of Signet have already been fully evaluated by the Federal Reserve Board and the Department of Justice in connection with the related holding company merger application. Subject to First Union's commitment to divest four branches in Virginia, the Board concluded that the proposal would not produce a significantly adverse effect on competition or the concentration of banking resources in the relevant markets. Moreover, the application filed with the OCC is structured as a corporate reorganization. As the bank level merger will not occur until after Signet has first come under the control of First Union pursuant to the Board's approval, there are no competitive issues involved in this application. For these reasons, the OCC has concluded that competitive considerations are consistent with approval. Finally, in light of FUNB's CRA performance record, the CRA plan that FUNB has adopted with respect to its lending, services, and investments in Maryland, Virginia, and the District of Columbia, supervisory information, and other facts of record relating to CRA and convenience and needs considerations, the OCC has concluded that the comments relating to market power and financial service options for LMI and minority customers do not raise concerns that warrant denial of this proposal.²³

3. Conclusion

²³ Commenters also alleged that previous FUNB acquisitions have involved job losses and layoffs that resulted in successful employment discrimination lawsuits, and criticized an alleged lack of diversity at FUNB in employment generally, management, and the Board of Directors. Commenters also urged the OCC to require FUNB to disclose pending litigation in which it is involved. The OCC notes that, in October 1997, First Union agreed to settle a lawsuit alleging age and race bias in its employment practices involving layoffs, without admitting any wrongdoing. With respect to the race and gender of the management and Board of Directors of FUNB, the OCC generally does not address employment discrimination matters within banks. The EEOC has the specific statutory authority to investigate complaints of employment discrimination. Further, in evaluating how an application will help meet the convenience and needs of the communities affected, the OCC focuses on the resulting bank's furnishing of banking services and products. The OCC does not, however, include an evaluation of an application's impact on individual community levels of employment. One commenter stated that Signet's consumer financial services division is the subject of controversy related to offering loan checks by mail and criticized an announcement by FUHEB that it would name as president an executive from Signet's consumer financial services division. The commenter notes, however, that First Union has said publicly that it does not intend to offer loan check products. The OCC has reviewed the foregoing comments in light of all the facts of record, including relevant supervisory information, and has concluded that none of the comments reflects so adversely on managerial, convenience and needs, or other factors as to warrant denial of the proposal.

For the foregoing reasons, the OCC has concluded that CRA considerations are consistent with approval of the proposal.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicant, we find that the merger of FUNB and Signet is authorized under 12 U.S.C. § 215a-1 and 1831u(a), and the resulting bank may retain and operate the offices of both banks under 12 U.S.C. §§ 36(b)(2) and 1831u(d)(1). Accordingly, this Merger Application is hereby approved.

/s/
Julie L. Williams
Chief Counsel

11-09-97
Date

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