Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #97-84
September 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF FIRST WESTERN BANK, NATIONAL ASSOCIATION NEW CASTLE, PENNSYLVANIA

September 5, 1997

I. INTRODUCTION

On July 22, 1997, First Western Bank, National Association, New Castle, Pennsylvania, ("FWB-NA") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to merge First Western Bank, Federal Savings Bank, Sharon, Pennsylvania, ("FWB-FSB") with and into FWB-NA under FWB-NA's charter and title, under 12 U.S.C. §§ 215c, 1467a(s) and 1828(c) ("the Pennsylvania Merger Application"). FWB-NA is a member of the Bank Insurance Fund ("BIF"). It has its main office in New Castle, Pennsylvania, and branches in Pennsylvania and, has proposed that, assuming approval of applications to be decided with this application, it will operate a branch in Ohio prior to and at the time of the merger transaction. FWB-FSB is a member of the Savings Association Insurance Fund ("SAIF"). It has its main office in Sharon, Pennsylvania, and operates branches in Pennsylvania and Ohio. OCC approval is also requested for the bank resulting from the merger to retain FWB-NA's branches and FWB-FSB's main office and branches as branches after the merger under 12 U.S.C. § 36(c).

On July 29, 1997, FWB-NA applied to establish a branch in Mentor, Ohio, ("the Mentor Branch Application") under 12 U.S.C. § 36. On July 29, 1997, FWB-NA also applied to purchase certain assets, and assume certain liabilities, from its affiliate, FWB-FSB, Sharon, Pennsylvania, under 12 U.S.C. §§ 24(Seventh) and 1828(c) ("the Ohio P&A Application"). FWB-NA proposes to acquire the business currently conducted by FWB-FSB at its branch in Mentor, Ohio, and that business will be transferred to FWB-NA's new Ohio branch. Consummation of these transactions will precede the Pennsylvania Merger.

FWB-NA and FWB-FSB are subsidiaries of First Western Bancorp, Inc. ("FWBI"), a bank holding company headquartered in New Castle, Pennsylvania. By means of the Mentor Branch and Ohio P&A transactions, the business of one branch of FWB-FSB in Ohio will be transferred to one new branch of FWB-NA. In the Pennsylvania Merger, FWBI's existing savings

bank subsidiary, headquartered in Pennsylvania with branches in Pennsylvania and Ohio, will be merged into FWB-NA, its lead bank, with its main office and branches in Pennsylvania and, as discussed, one branch in Ohio. After the transactions, FWB-NA will be headquartered in Pennsylvania and will operate branches in both Pennsylvania and Ohio.

No protests or comments have been filed with the OCC in connection with these applications.

II. LEGAL AUTHORITY

A. FWB-NA may Establish the *de novo* Branch in Ohio under 12 U.S.C. § 36(g).

FWB-NA has applied to establish a *de novo* interstate branch in Mentor, Ohio, under the Riegle-Neal Act, 12 U.S.C. § 36(g).[1] A national bank may establish an initial *de novo* branch in another state in which it does not already operate a branch under 12 U.S.C. § 36(g), subject to the requirements of that section:

> Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if --
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> (A) there is in effect in the host State a law that --
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> (i) applies equally to all banks; and
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> (ii) expressly permits all out-of-State banks to establish de novo branches in such State; and
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> (B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

12 U.S.C. § 36(g)(1) (Revised Statutes § 5155, as added by section 103(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the "Riegle-Neal Act")). In the Mentor Branch Application, Pennsylvania is FWB-NA's home state, and Ohio is the host state.[2] In an earlier application, the

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[1] FWB-NA proposes that its Mentor Branch will be at the same location as the branch of its affiliate, FWB-FSB. FWB-NA proposes to acquire the business of FWB-FSB's branch in the subsequent Ohio P&A. During the short time between the time FWB-NA's branch is established and the time the Ohio P&A is consummated, it is proposed that the branches of both institutions will operate at the same locations. See 12 C.F.R. § 7.3001 (national banks' sharing space and employees with other businesses, including other banks and financial institutions).

[2] For purposes of section 36(g), the following definitions apply: The term "home State" means "the State in which the main office of a national bank is located." 12 U.S.C. § 36(g)(3)(B). 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." 12 U.S.C. § 36(g)(3)(C). The term "de novo branch" means a "branch of a national bank which (i) is originally established by the national bank as a branch, and (ii) does not become a branch of such bank as a result of (I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution or (II) the conversion, merger, or consolidation of any such institution or branch." 12 U.S.C. § 36(g)(3)(A). Moreover,

OCC considered the Ohio statute and determined it met the requirements in, and so triggered the interstate branching authority of, 12 U.S.C. § 36(g)(1). See, e.g., Decision on the Application of Union County National Bank of Liberty, Liberty, Indiana, to Establish a Branch in Oxford, Ohio (OCC Corporate Decision 97- __, August 7, 1997). Accordingly, FWB-NA's application to establish the Mentor Branch may be approved under 12 U.S.C. § 36(g)(1).

An application by a national bank to establish an interstate *de novo* branch under section 36(g) also is subject to certain conditions set forth in 12 U.S.C. § 36(g)(2)(A). These conditions are incorporated from the provisions for approval of an interstate merger transaction by the appropriate federal banking agency under section 44 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831u. Specifically, the conditions are those contained in paragraphs (1), (3), and (4) of 12 U.S.C. § 1831u(b). These conditions are: (1) compliance with state filing requirements, (2) community reinvestment compliance, and (3) adequacy of capital and management skills.

FWB-NA's Branch Application satisfies these conditions to the extent applicable. First, the proposal complies with applicable filing requirements. A bank applying for an interstate branch must (1) comply with the filing requirements of the host state as long as the filing requirements do not discriminate against out-of-state banks and are 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. See 12 U.S.C. § 36(g)(2)(A) (incorporating section 1831u(b)(1)). Ohio law requires that a bank that transacts business in Ohio, the main office of which is located in a state other than Ohio, must file as a foreign corporation with the secretary of state. See Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40 (amending several sections in Ohio Rev. Code §§ 1703.01 *et seq*.). These amendments make out-of-state banks subject to the same foreign corporation filing requirements as out-of-state nonbanking corporations. FWB-NA sent a copy of its OCC Branch Application to the Ohio state bank supervisor, as required by section 1831u(b)(1)(A)(ii), and has filed the required notice under Ohio law. Thus, this Branch Application satisfies the Riegle-Neal Act's filing requirements.

Second, the proposal satisfies all requirements relating to community reinvestment compliance. In determining whether to approve an application under section 36(g), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), (2) take into account the CRA evaluations of any bank that would be an affiliate of the resulting bank, and (3) take into account the applicant's record of compliance with applicable state community reinvestment laws. See 12 U.S.C. § 1831u(b)(3) (as incorporated by section 36(g)(2)(A)). The CRA requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods. See 12 U.S.C. § 2903. Based on the OCC's most recent examination, FWB-NA

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section 36(g) applies only to a national bank's initial *de novo* branch in a host state. Once the bank has a branch or branches in the state, then that state is not one "in which the bank does not maintain a branch." In such states, as discussed below, subsequent branching by a national bank is governed by the other subsections of section 36, as appropriate.

has a satisfactory rating with respect to CRA performance and based on the most recent Office of Thrift Supervision examination, FWB-FSB, the only affiliate of FWB-NA subject to CRA, has a satisfactory CRA performance rating.[3] Finally, Pennsylvania does not have community reinvestment laws.

Third, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for a *de novo* branch under section 36(g) only if the bank is adequately capitalized as of the date the application is filed and will continue to be adequately capitalized and adequately managed after the transaction. See 12 U.S.C. § 1831u(b)(4) (as incorporated by section 36(g)(2)(A)). As of the date the application was filed, FWB-NA satisfied all regulatory and supervisory requirements relating to adequate capitalization, and it currently is at least satisfactorily managed. The OCC has also determined that, following the transaction, FWB-NA will continue to satisfy these standards. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

The proposed Mentor Branch is permissible under section 36(g)(1), and FWB-NA's Branch Application satisfies the conditions of section 36(g)(2). Accordingly, the Mentor Branch is authorized under 12 U.S.C. § 36(g).

B. The Ohio P&A is Authorized under 12 U.S.C. § 24(Seventh).

FWB-NA also applied to purchase certain assets from, and assume certain liabilities of, its affiliate, FWB-FSB, shortly after the Mentor Branch is established. These assets and liabilities consist of the affiliate's business at its branch in Mentor.

National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh). See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872-73 (8th Cir. 1931); In re Cleveland Savings Society, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). Such purchase and assumption transactions are commonplace in the banking industry. Accordingly, FWB-NA may purchase the assets, and assume the liabilities, of FWB-FSB's Mentor branch assuming these transactions are consistent with the Bank Merger Act, the Oakar Amendment and CRA. Compliance with these provisions will be discussed in Parts II.C., III.A. and III.B. of this Decision Statement.

C. The Ohio P&A Complies with 12 U.S.C. § 1815(d)(3).

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[3] We note that 12 U.S.C. § 1831u(b)(3)(B) requires consideration of the CRA records only of "bank" affiliates of the resulting bank. Since Federal savings banks are not "banks" for purposes of this provision, the statute does not require that FWB-FSB's CRA record be taken into account. See 12 U.S.C. § 1813(a) and (b). In any event, we note that its CRA rating is satisfactory. Further discussion of compliance with CRA with respect to all steps of the proposed transactions is set forth in Part III.B. of this Decision Statement.

Because the Ohio P&A involves the assumption by a BIF member to pay deposit liabilities of a SAIF member, it is considered to be a conversion transaction under 12 U.S.C. § 1815(d)(2)(B)(iii)(I) and (iv)(II). Institutions may participate in such transactions, without being subject to the requirements of section 1815(d)(2), if the transaction complies with the provisions of section 1815(d)(3), the Oakar Amendment.

The Oakar Amendment imposes several conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). As discussed above in Part II.A., the OCC has determined FWB-NA meets all applicable capital requirements.

In addition, a BIF member which is a subsidiary of a bank holding company may not be the acquiring and resulting bank in an Oakar transaction unless the transaction would comply with the requirements for an interstate bank acquisition of section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d), if the SAIF member involved in the transaction was a state bank that the BIF member's parent bank holding company was applying to acquire. See 12 U.S.C. § 1815(d)(3)(F). Consequently, we are to assume that the proposed transaction involves an acquisition from a state bank.[4]

Section 1842(d), as incorporated into section 1815(d)(3)(F), imposes limitations on Oakar transactions pertaining to the age of the bank being acquired, deposit concentration limits, compliance with federal CRA requirements and applicable state community reinvestment requirements, and capital and management of the resulting institution.

All of these are met with respect to the Ohio P&A. First, the age limit is met, because Ohio permits out-of-state bank holding companies to acquire in-state banks without any age limitation.[5]

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[4] Review of bank acquisitions under section 1842(d), and so also review of Oakar transactions under section 1815(d)(3)(F), is required only where the holding company is acquiring a bank (or hypothetical bank in the event of an Oakar transaction where the selling institution is a savings association) located in a state other than the holding company's home state. The home state of FWBI is Pennsylvania. The main office and most of the branch offices of FWB-FSB are located in Pennsylvania and more than two-thirds of its deposits are attributed to the Pennsylvania offices. Consequently, for purposes of section 1842(d), the hypothetical bank may be considered to be located solely in Pennsylvania. See, e.g., Decision of the Office of the Comptroller of the Currency on the Application to Merge Chemical Bank FSB, Palm Beach Florida, with and into The Chase Manhattan Private Bank (Florida) National Association, Tampa, Florida, and Operate Branches of Chemical FSB as Branches of The Chase Manhattan Private Bank (Florida), pp. 8-13 (OCC Corporate Decision 96-60) (October 31, 1996) (the "Chase Decision"). In this event, section 1815(d)(3)(F) would be inapplicable to this transaction. Nevertheless, because all of the assets and liabilities being transferred in this transaction are attributable to a branch of a SAIF member in Ohio, we will analyze the transaction for compliance with Ohio law. Cf. Decision of the Comptroller of the Currency to Approve Applications by First Bank National Association, Minneapolis, Minnesota, to Acquire First Bank, FSB, Fargo, North Dakota, and to Engage in Certain Related Transactions, p. 22 n. 33 (OCC Corporate Decision 97-32, May 31, 1997) (Oakar transaction analyzed based on location of single branch being acquired by a BIF member from a SAIF member) (the "First Bank Decision").

[5] In any event, we note that it appears that even if Ohio did impose an age threshold it would be inapplicable to this transaction. Applicable age limits may be imposed by a "host state," that is with respect to a bank holding

Second, the deposit concentration limits are satisfied. With respect to national concentration limits, FWB-NA and its insured depository institution affiliates must not control more than 10% of the total amount of insured deposits in the United States. See 12 U.S.C. § 1842(d)(2)(A). As of June 30, 1997, they controlled approximately $1.2 billion of deposits, which constitute well less than one percent of total United States deposits. The nationwide concentration limit is satisfied. With respect to state concentration limits, the applicant and all of its insured depository institution affiliates may not control more than 30% of the insured deposits in the state of the bank to be acquired if the bank holding company already controls an insured depository institution or any branch of an insured depository institution in the relevant state. See 12 U.S.C. § 1842(d)(2)(B). FWBI's total deposits of its insured depository institutions in Ohio is about $121 million, well under the 30% of total Ohio deposits which for commercial banks alone, as of March 31, 1997, exceeded $110 billion. Thus, the statewide concentration limit is satisfied.[6]

Third, the bank holding company's compliance with the federal CRA and with applicable state community reinvestment laws must be considered under 12 U.S.C. § 1842(d)(3)(A) (federal) & (B) (state). Bank holding company compliance with the federal CRA is evaluated by looking to the federal CRA record of the bank holding company's subsidiaries that are subject to the law. 12 C.F.R. § 228.29 (1996). In this regard, we note that the applicant bank has a "satisfactory" federal CRA rating. FWB-FSB also has a satisfactory rating with respect to CRA performance. With respect to compliance with applicable state community reinvestment laws, Pennsylvania does not have community reinvestment laws and Ohio's community reinvestment laws merely require compliance with federal community reinvestment laws. No public comments were received by the OCC relating to the applicant's or the holding company's federal or state CRA performance, and the OCC has no other basis to question the bank holding company's CRA performance. Thus, no issues arise under the federal CRA or state community reinvestment laws that would require rejection of this application.

Finally, we note that the condition of the bank holding company, including its capital position and management, is consistent with approval of this transaction under the standards set

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company, a state other than the home state of the bank holding company in which the bank holding company seeks to control a bank subsidiary. That is not the situation in the present case where the hypothetical transaction involves only the purchase of assets and assumption of liabilities from a "bank" rather than the acquisition of control of a bank. Cf. Decision of the Office of the Comptroller of the Currency on the Application to Merge Boatmen's Credit Card Bank, Albuquerque, New Mexico, with and into Nationsbank of Delaware, N.A., Dover, Delaware, pp. 6-7 (OCC Corporate Decision 97-20, March 20, 1997) (age limits inapplicable in bank merger where no branches will remain in the host state).

[6] We further note that section 1842(d)(2)(C) states that "no provision of this subsection shall be construed as affecting the authority of any State to limit . . . the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company. . . ."
Ohio, like the Riegle-Neal Act, imposes a 30% limitation. See Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40 (amending section 1115.05(B)). Consequently, even assuming its applicability to this transaction, no issues arise under state-imposed deposit concentration limits.

forth in section 1842(d)(1) as incorporated into the Oakar Amendment. Accordingly, the Ohio P&A complies with the Oakar Amendment.[7]

D. The Pennsylvania Merger is Authorized under 12 U.S.C. § 215c.

Title 12 U.S.C. § 215c provides:

> (a) Subject to section 1815(d)(3) [the Oakar Amendment] and 1828(c) [the Bank Merger Act] and all other applicable laws, any national bank may acquire or be acquired by any insured depository institution.
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> * * * * *
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> (d) For purposes of this section, the term 'acquire' means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

These provisions were added as Section 502(b) of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2393 (enacted December 19, 1991) ("FDICIA"). At the same time, in section 501(a) of FDICIA, parallel provisions addressing the authority of Federal savings associations to combine with any insured depository institution were added to the Home Owners' Loan Act ("HOLA") and codified at 12 U.S.C. § 1467a(s)(1), (3). Consequently, under the plain language of section 215c and the HOLA, if a transaction comports with the Oakar Amendment, as codified at 12 U.S.C. § 1815(d)(3), the Bank Merger Act, as codified at 12 U.S.C. 1828(c), and other applicable laws, then those sections authorize a merger between FWB-NA and FWB-FSB in accordance with the procedural requirements set forth in 12 C.F.R. § 5.33(c)(2).[8]

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[7] In addition, section 1842(d)(4) provides that the section shall not be construed as affecting the applicability of Federal or state antitrust laws. We note that, because the two entities involved in the transaction are affiliated, the transaction would have no impact on competition under Federal antitrust laws. State antitrust laws, even assuming their applicability to a transaction between a national bank and a Federal savings bank, also appear to impose no obstacle to the proposed transaction. Moreover, while Ohio has extensive antitrust laws, no protests or comments were received based on state antitrust grounds or any other grounds.

[8] The courts have long counseled that the meaning of a statute must, in the first instance, be determined based on the language that is used. See, e.g., Caminetti v. United States, 242 U.S. 470, 485 (1917). Parties who argue against the plain meaning of a statute face the "daunting standard" of showing "clear evidence that reading the statute literally would thwart the obvious purposes of the statute." Mansell v. Mansell, 490 U.S. 581, 592 (1989). In authorizing mergers between national banks and Federal savings associations, the language of section 215c could not be plainer -- if the merger is consistent with the Oakar Amendment, the Bank Merger Act, and other applicable law, then a national bank and a Federal savings association may merge.

For a full discussion of the authority of national banks and Federal savings associations to merge under the authority of

1. The Pennsylvania Merger Complies with 12 U.S.C. § 1815(d)(3).

The Pennsylvania Merger also is subject to the requirements of the Oakar Amendment, 12 U.S.C. § 1815(d)(3), because, as previously discussed, it involves the acquisition of a SAIF member by a BIF member.

The Oakar Amendment imposes conditions on approval of these transactions. The acquiring or resulting bank must meet all applicable capital requirements upon consummation of the transaction. See 12 U.S.C. § 1815(d)(3)(E)(iii). As discussed above in Part II.A., the OCC has determined FWB-NA meets all applicable capital requirements. In addition, for certain interstate transactions an analysis of 12 U.S.C. § 1842(d) is required. See 12 U.S.C. § 1815(d)(3)(F). In this case, the merger of FWB-NA and FWB-FSB would not be deemed an interstate transaction;[9] therefore, a section 1842(d) analysis is unnecessary.

Accordingly, the Pennsylvania Merger complies with the Oakar Amendment.

2. Branch Retention Following the Merger.

Given compliance with 12 U.S.C. §§ 215c, 1467a(s), and 1815(d)(3), and assuming that, as will be discussed below, the merger complies with the Bank Merger Act and other applicable law, we next look at whether FWB-NA, as the resulting bank, may retain as branches the branches of FWB-FSB. While the merger authority language of sections 215c and 1467a(s) is broad, these statutes do not specifically address branching. Generally, retention of branches by national banks following mergers or consolidations is governed by 12 U.S.C. § 36(b)(2). That provision, however, applies where the target in a merger is a national bank or a state bank -- not a Federal savings association. See, e.g., Decision of the Comptroller of the Currency in the Matter of the Merger Application Filed by First of America Bank -- McLean County, N.A., Bloomington,

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12 U.S.C. § 215c, see, e.g., the Chase Decision, the First Bank Decision and the Decision on the Application to Merge Washington Federal Savings Bank, Herndon, Virginia, With and Into The First National Bank of Maryland, Baltimore, Maryland, and Operate Branches of Washington Federal Savings Bank in Virginia, The District of Columbia and Maryland as Branches of The First National Bank of Maryland (OCC Corporate Decision No. 96-39, July 25, 1996) (the "FNB-Md. Decision").

[9] As discussed in n. 4, infra, the holding company and the hypothetical bank are considered to be located in the same state, Pennsylvania, for purposes of section 1842(d). Consequently, this would not be considered to be a transaction subject to section 1842(d)(3)(F). See the comprehensive discussion of the applicability of the interstate provision of the Oakar Amendment in the FNB-Md., Chase and First Bank Decisions. In any event, however, we note, as discussed on pages 5 and 6 of this Decision Statement, the standards set forth in section 1815(d)(3)(F), with respect to age requirements, state and federal concentration limits, state and federal CRA requirements, capital and management, and Ohio antitrust standards, are satisfied. In this regard, we also note that the holding company's total deposits attributable to Pennsylvania are about $1.1 billion whereas total commercial bank deposits in that state exceed $170 billion; consequently no issues arise under the 30% statewide concentration limit and the state does not impose any separate limitation. Moreover, no Pennsylvania antitrust laws appear to be implicated by this transaction and, as stated, no comments have been received on this or any other issue.

Illinois and Related Purchase and Assumption Transactions, p. 3 at n. 3 (Conditional Approval 69, November 12, 1992). Retention of branches acquired from a Federal savings association is governed by 12 U.S.C. § 36(c). Id. In this regard, we note that while section 36(c) refers to the establishment and operation of new branches, it also applies to branches established by a bank through acquisition. See State of Washington v. Heimann, 633 F.2d 886, 889-90 (9th Cir. 1980).

Title 12 U.S.C. § 36(c) provides:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to restrictions as to location imposed by the law of the State on State banks.

FWB-NA, with its main office and existing branches in Pennsylvania and Ohio, is "situated" in Pennsylvania and Ohio for purposes of section 36(c)(2), thus, permitting it to retain the Pennsylvania branches and the remaining seven Ohio branches of FWB-FSB following the merger transaction if consistent with Pennsylvania and Ohio branching law. See Seattle Trust & Savings Bank v. Bank of California, N.A., 492 F.2d 48, 51 (9th Cir.), cert. denied, 419 U.S. 844 (1974). See also 12 U.S.C. § 36(f)(1)(A). Both of these states permit statewide branching. See Pa. Stat. Ann. tit. 7, § 904(a) (Supp. 1997); Ohio Rev. Code § 1117.01(A) (as amended by Act of May 21, 1997, 1997 Ohio Laws Amended Substitute Senate Bill No. 40). Consequently, we conclude that FWB-NA is permitted to continue to operate the Pennsylvania and Ohio branches of FWB-FSB following consummation of the proposed merger transaction.

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, including purchase and assumption transactions, between insured depository institutions 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 Ohio P&A and the Pennsylvania Merger may be approved under section 1828(c).

1. Competitive Analysis.

Because FWB-NA and FWB-FSB are already owned by the same bank holding company, the Ohio P&A and the Pennsylvania Merger will have no anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of FWB-NA are presently satisfactory. FWB-NA expects to achieve efficiencies by operating the FWB-FSB offices in Pennsylvania and Ohio as branches rather than as a separate corporate entity. The geographic diversification of its operations will also strengthen the combined 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 Ohio P&A and the Pennsylvania Merger.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. FWB-NA will continue to serve the same areas in Pennsylvania and it will add FWB-FSB's offices in Ohio. Both FWB-NA and FWB-FSB currently offer a full line of banking services, and there will be no reduction in the products or services as a result of the merger. The combined bank will continue to offer a full line of banking products and services. The branches in Ohio will continue to engage in the same business, serving the same communities, that FWB-FSB is currently engaged in.

Upon completion of the transactions, customers of the predecessor institutions will have available to them a greater number of branches at which to bank. Currently, banking is not as convenient as it could be for customers who frequently travel across the state lines or for business customers who have operations in more than one state. Following the transactions, customers would be dealing with the same bank in the different states and will be able to readily access their accounts with greater convenience. The Ohio P&A and Pennsylvania Merger will permit the resulting bank to better serve its customers and at a lower cost.

No branch closings are contemplated as a result of the Pennsylvania Merger. However, as part of its ongoing business plans, FWB-NA evaluates its branch system, including branches acquired in transactions, and, as a part of the normal course of business, may close redundant or unprofitable branches. Any such closures will be made in accordance with applicable statutes and regulations, including notification of customers of the branches, and will consider the needs of the community affected.

Accordingly, we believe the impact of the Ohio P&A and the Pennsylvania Merger on the convenience and needs of the communities to be served is consistent with approval of the applications.

B. The Community Reinvestment Act.

The CRA requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. This includes the branch application, Ohio purchase and assumption transaction and the Pennsylvania merger. Both FWB-NA and FWB-FSB have satisfactory ratings with respect to CRA performance. No public comments were received by the OCC relating to these applications, and the OCC has no other basis to question the banks' performance in complying with the CRA.

The transactions are not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities that FWB-NA and FWB-FSB currently serve. FWB-NA will continue its current CRA programs and policies in Pennsylvania. After FWB-FSB is merged into FWB-NA, its Ohio offices will remain open as branches of FWB-NA. FWB-NA will carry forward the same CRA programs and policies it and FWB-FSB have today and add other programs as they are developed. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as FWB-NA and FWB-FSB have today as separate banks. The Mentor Branch, the Ohio P&A, and the Pennsylvania Merger, and the resulting operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. We find that approval of these applications is consistent with the Community Reinvestment Act.[10]

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the Mentor Branch, the Ohio P&A and the Pennsylvania Merger are legally authorized under 12 U.S.C. §§ 24(Seventh), 36(g), 215c and 1828(c) and the resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. § 36(c), and that the applications meet the other statutory criteria for approval. Accordingly, these applications are hereby approved.

/s/ 09-05-97

Julie L. Williams Date

[10] In addition, it is necessary under 12 U.S.C. § 215c(a) to ascertain that a transaction undertaken under its authority -- in this case, the merger between FWB-NA and FWB-FSB -- is in accordance with other laws governing national bank mergers or to determine that those laws do not apply to this merger. A review of other statutes applying to mergers and interstate branching involving national banks demonstrates that these statutes -- 12 U.S.C. §§ 215a, 215a-1, 36(d) and 36(g) -- are inapplicable to the transaction at issue which involves the merger of a Federal savings bank into a national bank. For a full discussion of the inapplicability of these provisions, see The FNB-Md., Chase and First Bank Decisions. In addition, we note that retention of the Ohio branches by FWB-NA is consistent with 12 U.S.C. § 36(e)(1) setting forth the exclusive bases for *interstat*e branching by national banks. As discussed, FWB-NA, as approved in this Decision Statement, will establish a de novo interstate branch in Ohio under 12 U.S.C. § 36(g) and applicable Ohio law. This branch is consistent with section 36(e)(1) since it is established under a source of authority, section 36, listed in that provision. As discussed, subsequent branches are *intrastate* branches established under the authority of section 36(c) and Ohio intrastate branching law and are, thus, not subject to the restrictions of section 36(e)(1).

Chief Counsel

Application Control Numbers: 97-NE-05-0133 (the Mentor Branch); 97-SE-02-0036 (the Ohio P&A); 97-SE-02-0037 (the Pennsylvania Merger).