



COPY

Comptroller of the Currency  
Administrator of National Banks

Washington, D. C. 20219

Box 132  
from "OCC Settlement  
Agreement II"

November 27, 1979

Comptroller Heimann thought you would find the attached decisions of interest. The merger decision represents this agency's first denial for Community Reinvestment Act considerations.

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Was ~~discrimination~~ (p.3) ?  
picked up in MIA stands?  
What remedial steps required?  
What was done to ensure  
compliance?  
Would OCC approve merger ~~into~~ not-  
withstanding discriminatory  
policies if other CRA factors  
checked out? (p.4)

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DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE BANK OF INDIANA, NATIONAL ASSOCIATION, GARY, INDIANA, INTO INDIANA INTERIM NATIONAL BANK (ORGANIZING), GARY, INDIANA, UNDER THE CHARTER OF INDIANA INTERIM NATIONAL BANK, AND WITH THE TITLE OF BANK OF INDIANA, NATIONAL ASSOCIATION

Decision

This is the Comptroller's decision on an application to merge Bank of Indiana, National Association, Gary, Indiana, (hereinafter, "Bank"), into and under the charter of Indiana Interim National Bank (Organizing), Gary, Indiana, (hereinafter, "Interim Bank"). This application is part of a process whereby Money Management Corporation, Chicago, Illinois, a registered One-Bank holding company that currently owns 99.3% (less Directors' qualifying shares) of Bank, will acquire the remaining shares of Bank and thereby own 100% (less Directors' qualifying shares) of Bank through the resulting bank. As part of the process, Money Management Corporation sponsored a charter application for a new national bank which was preliminarily approved by this Office on October 20, 1978. This merger therefore merely combines a corporate shell with an existing bank. As such, it presents no competitive issues under the Bank Merger Act, 12 U.S.C. 1828(c).

In deciding the application, this Office is required to evaluate the Bank's record in helping to meet the credit needs of its community. 12 U.S.C. 2903. Accordingly, as a result of three consumer examinations conducted between November 1977 and March 1979, an extensive record has been developed regarding the Bank. These examinations have revealed serious problems with the Bank's performance under the Community Reinvestment Act, including lack of participation with respect to lending within neighborhoods in the city of Gary, no evidence of meaningful communication with members of the community regarding banking services, and no marketing or special credit-related programs to make residents of Gary aware of the Bank's credit services. The examinations also reveal evidence of discriminatory lending policies and practices which impact the Bank's CRA performance.

The Bank's CRA record raises serious concerns, and has been determined by this Office to be less than satisfactory.

It should be noted at the outset that the Community Reinvestment Act, 12 U.S.C. 2901 et seq., does not require that banks meet every credit need of their community, nor does it dictate that a certain proportion of a bank's loan portfolio be concentrated in loans to persons residing or doing business in low- and moderate-income neighborhoods. In other words, credit allocation is neither contemplated nor required by the law. However, the law does contemplate a regulatory scheme which encourages financial institutions to assist affirmatively in addressing community credit needs in a meaningful fashion, and requires that the four federal financial regulatory agencies "assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution." 12 U.S.C. 2903.

The agencies have attempted to carry out this responsibility in a manner which fulfills the intent of the law, yet accommodates simultaneously the need to preserve the institution's ability to determine how best to carry out its community lending responsibilities and to meet its fiduciary responsibilities to depositors and shareholders. A balancing of these considerations is reflected in the CRA Regulation, which set forth a series of Assessment Factors to be used by the agencies in evaluating CRA performance. 12 CFR 25.7. The assessment factors make clear that a bank's financial condition, size, and legal impediments, local economic conditions, and other factors will be considered in assessing its ability to meet various community credit needs. 12 CFR 25.7(k). In addition, the assessment factors address the institution's actual record of performance in meeting community credit needs.

The assessment factors provide a means by which the agencies can evaluate the institution's CRA record without mandating that the institution conform to a rigid set of minimum standards. The use of multiple factors for assessing performance makes it possible for a bank to perform with a less than satisfactory record under one factor, and to compensate for this record by having an above-average performance under other factors. The agencies evaluate the bank's performance under all factors, to determine whether its total record represents an affirmative response to its obligations under CRA.

A review of the record attending the application of the Bank, and other information, reveals evidence that the Bank's record of helping to meet the credit needs of the city of Gary, including low- and moderate-income Gary neighborhoods, is, taken as a whole, less than satisfactory.

Activities conducted by the Bank to ascertain the credit needs of the residents of low- and moderate-income neighborhoods in the city of Gary, including efforts to communicate with the residents of

Gary have been extremely limited. The CRA assessment factors emphasize the importance of such efforts, which might include initiating programs and discussions with residents and businesses to ascertain credit needs, establishing working relationships with real estate brokers or others who do business in Gary, and advertising credit services in media likely to reach all segments of the Gary population. 12 CFR 25.7(a), (b).

The CRA assessment factors emphasize the importance of extending housing related credit, and also provide for assessment of any activities intended to discourage loan applications. 12 CFR 25.7(i) and 25.7(d). While the Bank has had a history of granting one-to-four family residential mortgage loans, it adopted in January 1978 loan terms requiring downpayments, compensating balances, and interest rates significantly above those prevailing in its market. This Office has found that the clear effect of such terms is to discourage applications for such loans, particularly from residents of low- and moderate-income neighborhoods. The Bank's mortgage lending activity has diminished sharply as a result.

The assessment factors require a comparison of the institution's performance in low and moderate income areas to its activities in the community as a whole. 12 CFR 25.7(e). A review of the geographic distribution of the Bank's credit extensions, credit applications, and credit denials indicates a consistent disparity in credit availability between the city of Gary and its surrounding suburban communities. The city of Gary was receiving disproportionately lower amounts of installment, commercial, and housing-related credit, and was experiencing significantly higher denial rates. In addition, for housing-related credit, there were dramatic disparities between low- and moderate-income census tracts and those with above-moderate household incomes.

The assessment factors require the agencies to consider any evidence of discriminatory lending practices. 12 CFR 25.7(f). A number of the Bank's loan terms and underwriting criteria have raised substantial questions as to their discriminatory effect on minorities and residents of low- and moderate-income areas. These include minimum loan size for both commercial and residential loans, excessively restrictive credit rating requirements, and minimum floor area size requirements for homes for which mortgage loans were being sought. Many of the Bank's discriminatory policies were removed only after the filing of its application. Furthermore, the Bank has repeated violations of the Equal Credit Opportunity Act even after having them cited in examinations by this Office.

If each of these deficiencies in the Bank's record were viewed individually and represented an isolated problem, disapproval of

the application might not be warranted. Similarly, these deficiencies might not be a basis for disapproval if the Bank had performed in an outstanding manner under other assessment factors. However, under the provisions of CRA and the implementing regulation, the agencies are required to review the overall performance of the Bank, taking all factors into account. The agencies must determine whether the Bank's total record constitutes an affirmative effort to identify and help meet community credit needs, consistent with its basic responsibility to respond to the convenience and needs of the community it was chartered to serve, including low- and moderate-income areas.

Taken as a whole, it is clear that the cumulative effect of the Bank's performance under the CRA assessment factors constitutes an unsatisfactory record. The Bank has not demonstrated an affirmative approach to any CRA assessment factor. It has clearly performed inadequately in low- and moderate-income areas. No evidence has been offered which persuades this Office that the Bank's size and condition, the condition of the local economy, legal barriers, or other extenuating circumstances justify its failure to respond to credit needs in Gary, or to inform Gary neighborhoods of the Bank's credit services. In light of all of these considerations, the Bank's poor record of performance under CRA necessitates the denial of this application.

It should be noted that the Bank has recently taken some steps to improve its record of performance, including the appointment of a vice president for Gary affairs. In addition, it has made a commitment to make \$10 million of credit available over the next five years to qualified borrowers in the downtown Gary area, subject to completion of a civic center complex and construction of a U.S. Steel office tower. The Bank has also indicated its willingness to consider participating in the city's housing rehabilitation loan program.

Those actions, along with the recent changes in the Bank's loan policies are encouraging. However, it is impossible for this Office to feel confident that they will result in a substantially improved CRA performance by the Bank. The changes in mortgage loan -- underwriting standards will have no practical effect as long as the Bank adheres to its policy of discouraging mortgage applications through unfavorable interest rates and loan terms. The Bank's willingness to consider participating in the rehabilitation loan program is not a firm commitment to undertake any action, and the \$10 million downtown lending commitment is qualified by extensive contingencies.

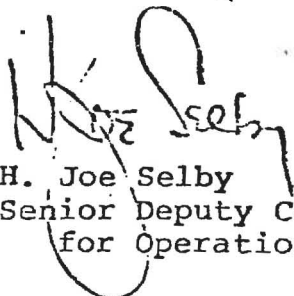
Because these recent steps constitute commitments primarily for uncertain prospective action, and do not represent significant



improvements in the Bank's actual performance, they are not sufficient to warrant approval of the application. This Office has indicated in a prior opinion on a CRA-related application that recently undertaken improvements by an applicant can be considered favorably under CRA, even if total performance is still less than adequate. (See dissenting opinion on application to the Federal Deposit Insurance Corporation by the Greater New York Savings Bank.) That opinion emphasized, however, that such recent improvements may be valid considerations if, and only if, they are of a significant magnitude, and have been in effect long enough to demonstrate that they are already strengthening the Bank's performance and should eventually result in a satisfactory performance level. It must be emphasized once again that token improvements or policy changes undertaken immediately prior to or during submission of an application cannot be construed as constituting good-faith compliance with the spirit of CRA.

This Office encourages the Bank to follow through on its recent and proposed actions in response to CRA, and to review other areas in which improvements can be made. Subsequent examinations may yield a judgment that approval of future applications will be warranted.

Accordingly, applying this statutory criteria, the Office of the Comptroller of the Currency has concluded that this application is not in the public interest and is hereby denied.



H. Joe Selby  
Senior Deputy Comptroller  
for Operations

Dated: November 2, 1979