



# COMMUNITY REINVESTMENT ASSOCIATION

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## of NORTH CAROLINA

July 28, 2004

Sue Costello  
Vice President  
Federal Reserve Bank of Atlanta  
1000 Peachtree Street, N.E.  
Atlanta, GA 30309-4470

VIA FACSIMILE: (404) 498-7302

Dear Ms. Costello:

The Community Reinvestment Association of North Carolina (CRA-NC) and the North Carolina Fair Housing Center ("Fair Housing Center") submit additional comments on the application of SunTrust Banks, Inc. ("SunTrust") to merge with National Commerce Financial Corporation ("National Commerce") and acquire its subsidiaries. These comments provide additional information related to the fair lending comments and request for investigation dated July 16, 2004. Although the period for public comments ended on July 19, 2004, these comments are a response to public comments made by Central Carolina Bank ("CCB") about its tiered pricing system for mortgages.

In previous comments, CRA-NC and the Fair Housing Center asserted that National Commerce's policy and practice of pricing home mortgage loans differently based on the size of the loan has an adverse and disparate impact on African Americans, who disproportionately apply for mortgage loans in amounts less than \$75,000. National Commerce uses a tiered system to increase the interest rate as the loan size decreases. The interest rate increases by as much as 1/8 of a point as the loan size decreases at each tier. The tiers are as follows: equal to or greater than \$75,000, \$150,000, and 200,000.

In the Herald Sun newspaper article dated July 9, 2004, CCB spokeswoman Eileen Sarro argued that the U.S. Department of Housing and Urban Development (HUD) allows a spread of up to two percentage points in "so-called tiered pricing". However, the HUD Ruling on Tiered Pricing (24 CFR Part 202.20) specifically prohibits pricing interest rates on the basis of loan size.

*Interest rate. Whenever a mortgagee offers a particular interest rate for a mortgage type in an area, it may not restrict the availability of the rate in the area on the basis of the principal amount of the mortgage. A mortgagee may not direct mortgage applicants to any specific interest rate category on the basis of loan size. [24 CFR Part 202.20 (d)]*

The ruling prohibits the customary lending practice of variation in mortgage charge rates that exceeds two percentage points for FHA insured single family mortgages. Mortgage charge rates refer to the amount of mortgage charges for an FHA insured mortgage expressed as a percentage of the initial principal amount of the mortgage. Mortgage charges are defined as any charges "under the control of the mortgagee and not collected for the benefit of third parties, including, but not limited to interest rate discount points and loan origination fees." [24 CFR Part 202.20 (c)] Interest rates are defined as a separate category.

Higher interest rates for smaller mortgage loans are not a business necessity, particularly given the disparate and adverse impact on protected classes. In the same Herald Sun newspaper story, Sarro said that "higher rates on smaller loans help banks cover the cost of managing their portfolios." However, the cost of making mortgage loans is the same regardless of the size. Small loans are not more expensive to originate, but they generate less revenue. Part of this difference in margins is a result of servicing value on the secondary market: larger loans have larger

servicing fees. The bank includes lower revenue generation as a cost, but CRA-NC and the Fair Housing Center do not believe that is an accurate categorization and therefore cannot justify the tiered pricing policy. Smaller loans may not generate the same amount of revenue or profit, but lower profit is not equivalent to higher cost.

In response to public outcry about their tiered-pricing system, National Commerce has distorted the record. HUD clearly states that pricing interest rates according to loan size is illegal for FHA-insured loans. Given the analysis that low-income and minority borrowers are more likely to apply for smaller loans that receive higher interest rates, we can only conclude that National Commerce's pricing policy is intentionally designed to charge low-income and minority applicants higher rates or to discourage them from applying.

As a result of National Commerce's policy and practice of pricing mortgage loans on the basis of loan size, the 487 borrowers in the Raleigh-Durham-Chapel Hill MSA, the 515 borrowers in the Greensboro-Winston Salem-High Point MSA, and the 397 borrowers in the Charlotte-Gastonia-Rock Hill MSA who received loans for less than \$75,000 are paying higher interest rates than based on a discriminatory policy. We ask that borrowers throughout North Carolina be refunded on any overpayments.

As a condition for regulatory approval of this merger, the surviving entity, SunTrust, should be required to sign a commitment to end the practice of tiered pricing. In other cases of discrimination as a result of disparate and adverse impact, institutions have been required to make monetary restitution for the adverse impact on communities of color. Accordingly, SunTrust should provide monetary compensation to the wider communities affected by National Commerce's pricing policy.

It is clear from the HUD Ruling on Tiered Pricing that charging different interest rates for mortgage loans on the basis of loan size is prohibited. Yet, National Commerce continues this policy – placing different terms on loans on the basis of loan size. We therefore petition the Federal Reserve Board and the Department of Justice to require that the surviving entity end this practice and take corrective action to compensate borrowers and communities that have been adversely affected.

CRA-NC and Fair Housing ask the Federal Reserve Board to deny the merger application until SunTrust agrees to change the policy and compensate borrowers for overpayments.

Sincerely,

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cc.

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