



COMMUNITY REINVESTMENT ASSOCIATION

of NORTH CAROLINA

August 4, 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”) submits additional comments on the application of SunTrust Banks, Inc. (“SunTrust”) to acquire National Commerce Financial Corporation (“NCF”) and its subsidiaries. These additional comments are in response to SunTrust’s July 21, 2004, response to questions from the Board of Governors of the Federal Reserve System and in response to SunTrust’s July 27, 2004, response to comments from North Carolina community groups.

SunTrust and National Commerce point to their “Outstanding” rating on their most recent Community Reinvestment Act (“CRA”) exams. While CRA-NC recognizes this, we also recognize the limitations of CRA exams. CRA does not include analysis of lending to minority borrowers or census tracts, and contrary to SunTrust’s claim in its July 27th response, National Commerce’s 2001 CRA exam did not include North and South Carolina. The CRA exam explicitly states that these acquired locations were not “included in this evaluation and had no impact on the bank’s CRA performance” (OCC, National Commerce CRA Performance Evaluation, Public Disclosure, December 31, 2001). Once again, we ask that the Federal Reserve thoughtfully consider community viewpoints and experiences.

An Issue of Trust

In 2000, National Commerce signed an agreement with CRA-NC under which it committed to improve its lending to minority and low and moderate-income households and neighborhoods. When signing an agreement, CRA-NC works with the bank to develop the goals and conducts monitoring meetings during which we discuss the bank’s progress toward meeting its goals, point out strengths and weaknesses, and talk about solutions to problems. In our meetings with National Commerce about its performance, CRA-NC followed a similar strategy. We are always willing to work with a bank to improve.

However, the concerns we expressed to National Commerce were continually disregarded. We raised concerns about the bank’s lending to minority and low-income borrowers. We raised concerns about the tiered pricing structure being discriminatory because of possible disparate and adverse impact on minority borrowers. We raised concerns about the lack of diversity on local advisory boards. We raised concerns about their failure to develop a minority vendor participation program. We raised concerns about the deterioration of community partnerships. The bank did nothing. Such unresponsiveness does not build trust.

When CRA-NC, along with several other community organizations, met with SunTrust and National Commerce in early July to discuss our concerns about the banks’ past performance and the impact of the merger, we once again found that our concerns were mostly disregarded. We raised a similar set of concerns and expressed willingness to work together to address those concerns. Rather than respond with real solutions, SunTrust asked North Carolina community groups to “trust” that they would do better. National Commerce had four years to build trust and failed.

SunTrust's attitude clearly demonstrates that they don't understand: trust has to be earned. They have not and will not earn our trust with an attitude that fails to recognize weaknesses and problems, refuses to set goals by which they can be accountable, and offers platitudes instead of real solutions.

We are not looking for an agreement. Frankly, the agreement with National Commerce was a failure. We are looking for change and a comprehensive plan to change the culture and operations of a bank that has failed its community. We are asking the Federal Reserve to impose conditions to ensure that no more harm is done.

Lending to LMI and Minority Borrowers

SunTrust argues that it is fully committed to improving and building upon National Commerce's lending record in North Carolina, arguing that there is no merit to criticisms of National Commerce's lending practices. CRA-NC's criticism is well founded.

We disagree with the claim that National Commerce met the goal of increasing mortgage lending to minority and low- and moderate-income (LMI) communities and borrowers as a percentage of total loans. In 1999, Central Carolina Bank ("CCB") originated 570 mortgage loans to African American borrowers out of a total of 8,217 loans, representing 6.9% of all loans made in North Carolina. Despite National Commerce's claims that it increased lending, in 2002 National Commerce made 386 loans to African American borrowers, just 4.7% of all 8,224 loans the bank made. Both in terms of absolute number and as a percentage of total loans originated, National Commerce decreased its lending to African Americans from 1999 to 2002.

Similarly, from 1999 to 2002, the absolute number as well as the percentage of loans originated to LMI borrowers in North Carolina decreased. In 1999, CCB made 2355 loans to LMI borrowers in North Carolina, representing 28.7% of the loans made in the state. In 2002, National Commerce made 2134 loans to LMI borrowers, which comprised 25.9% of loans made in North Carolina.

While the bank claims that it met its goals of increasing the proportion of loans to LMI and minority borrowers in several areas, National Commerce failed to reach many of its overarching goals. Together, CRA-NC and National Commerce set reasonable goals of 0.5 percentage point increase in lending to LMI and minority borrowers each year. Attached is a copy of the original percentages and the goals for each year. Breaking down the lending by type of loans and comparing the 2002 lending to the Year 3 goal shows that National Commerce did not meet its goals for 5 of the 9 categories: home purchase loans in LMI tracts, refinance loans in LMI tracts, refinance loans to LMI borrowers, refinance loans to minorities, and home improvement loans to minority borrowers.

However, the July 27th comments show 1999 percentages that differ from the percentages in the original agreement. Using those percentages as starting points, and calculating a 1.5 percentage point increase in lending over the three year period, National Commerce did not meet its goals in 6 of 9 categories, including home purchase lending to minority borrowers.

CRA-NC compares National Commerce to all of its commercial bank peers rather than a selective group. In 2002, National Commerce dedicated a smaller portion of total loan amount to African American borrowers than its peers in all North Carolina MSAs except Hickory-Morganton-Lenoir. National Commerce dedicated a smaller portion of total loan amount to LMI borrowers in all but two North Carolina areas (Charlotte and rural counties). In three North Carolina MSAs (Greensboro, Hickory, and Wilmington), the difference between National Commerce and all commercial banks was more than three percentage points.

Tiered Pricing

National Commerce has a policy of pricing interest rates for mortgage loans based on loan size. Although this policy may be applied neutrally and without regard to any prohibited factor, it has a disparate and adverse impact on African American mortgage applicants, who are more likely to apply for loans of smaller sizes. National Commerce does not have a compelling argument that tiered pricing is a business necessity. As discussed in comments submitted by CRA-NC on July 28, 2004, 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)]

While the HUD Ruling on Tiered Pricing allows for variation in mortgage charge rates, National Commerce is directing applicants to different interest rate categories based on the size of the loan. HUD clearly prohibits this practice for FHA loans.

Since a significant number of lenders do not have tiered pricing strategies based on loan size, it is evident that tiered pricing is **not** a business necessity. In its July 27th comments, SunTrust states, “any origination or discount fee, interest rate or servicing value that is based up on a percentage of the loan, by definition, will be less for a smaller loan than it is for a larger loan,” and that some lenders have adopted pricing strategies to account for the differences in costs. None of these items represent an actual cost of making the loan – they refer to the amount of revenue that a loan generates. CRA-NC argues that the smaller profits as a result of a smaller loan size is not a cost and does not justify tiered pricing in the allocation of credit when that tiered pricing has a disparate and adverse impact on protected classes.

National Commerce claims that its tiered pricing strategy applies only to conventional mortgages and excludes home improvement loans. As a result, CRA-NC analyzed National Commerce’s 2002 and 2003 HMDA lending to include only conventional home purchase and refinance loans. The disparate impact of the tiered pricing strategy remains clear, with African Americans more likely to apply for and receive smaller loans at higher rates.

In 2002, in the Raleigh-Durham-Chapel Hill MSA, African American applicants were 2.3 times more likely than white applicants to apply for a conventional home purchase or refinance loan for less than \$75,000 from National Commerce. African Americans were 2 times more likely than White borrowers to receive a conventional home purchase or refinance loan for less than \$75,000. In 2002, 18.1% of African American borrowers received a loan for less than \$75,000, while just 8.9% of White borrowers received a similar loan for less than \$75,000. In contrast, White borrowers were 2.1 times more likely to apply for a conventional home purchase or refinance loan between \$200,000 and \$330,000.

In Charlotte in 2002, forty percent of all African American borrowers received such loans for less than \$75,000, compared to less than 22% of White borrowers. African Americans were 1.8 times more likely than Whites to apply for and receive a conventional home purchase or refinance loan for less than \$75,000 from National Commerce. In Greensboro, African Americans were 1.6 times more likely than Whites to apply for a conventional home purchase or refinance loan for less than \$75,000.

In 2003, African Americans in the Raleigh-Durham-Chapel Hill MSA were 2.2 times more likely than Whites to apply for and 2.4 times more likely to receive a conventional home purchase or refinance loan for less than \$75,000 from National Commerce. In 2003, in Greensboro-Winston Salem-High Point MSA, African Americans were 1.8 times more likely than whites to receive a loan for less than \$75,000.

Throughout North Carolina in 2003, African Americans were nearly twice as likely as White borrowers to receive a conventional home purchase or refinance loan for less than \$75,000 from National Commerce. While 18.7% of White borrowers received conventional home purchase or refinance loans for less than \$75,000 from National Commerce, 36% of African American borrowers received such loans. In 2003, 1,934 borrowers received conventional home purchase and refinance loans from National Commerce in North Carolina. These borrowers are paying higher interest rates for their loans.

Geographically, the tiered pricing policy has an adverse and disparate impact on census tracts with minority populations that comprise 50% or more of the total population. In the Raleigh-Durham-Chapel Hill MSA in 2003, 37% of the loans National Commerce originated in minority census tracts were for amounts less than \$75,000. Of all loans National Commerce originated, 7.7% financed properties in minority census tracts. In comparison, of all loans originated for less than \$75,000, 24% were made in minority census tracts.

In the Charlotte-Gastonia-Rock Hill MSA in 2003, nearly 60% of National Commerce originations in minority census tracts were for amounts less than \$75,000, which is 2.3 times higher than the percentage (25%) of all

originations. In the Greensboro-High Point-Winston Salem MSA, 67.6% of loans originated in minority census tracts were for amounts less than \$75,000. In comparison, 29.2% of all loans originated were for amounts less than \$75,000.

National Commerce argues that HMDA data by itself cannot serve as the basis for a finding of discrimination. It is widely agreed that HMDA data cannot prove discrimination in underwriting or disparate treatment. However, the HMDA data clearly demonstrates discrimination based on disparate impact because it shows the disproportional and adverse impact of National Commerce's pricing policy on protected classes. We ask that the Federal Reserve and Department of Justice examine the lending policy of National Commerce and require the bank to provide compensation for borrowers who have paid too much as a result of the discriminatory policy.

The clear pattern of discrimination based on disparate and adverse impact suggests that borrowers from protected classes are also more likely to be subject to disparate treatment at National Commerce. Therefore, we also ask for a larger review of loan files and documents to better understand whether there is also disparate treatment at National Commerce.

We are pleased that SunTrust does not have a tiered pricing based on loan size policy. We ask that the Federal Reserve require the end of the tiered pricing program as a condition of the merger. However, SunTrust will be acquiring a culture and a history of loan pricing that may be discriminatory. This policy is partially responsible for the decrease in lending to African American and LMI borrowers, which SunTrust will have to address. SunTrust, as the surviving entity, will be responsible for any compensation awarded to borrowers and communities that have suffered as a result of the discriminatory pricing policy. Therefore, the policy is relevant to the merger.

Fair Lending Training and Compliance

In the July 21st comments, both SunTrust and National Commerce provide information on their Fair Lending Policies and Training. CRA-NC is unsatisfied with SunTrust's fair lending training and compliance programs, which will be implemented throughout the resulting organization after the merger. SunTrust's fair lending training for employees consists of two web-based fair lending courses and a policy statement that SunTrust does not tolerate any form of illegal discrimination. While the policy statement is important and web-based training can be a part of fair lending training, by themselves they do not constitute a sufficient fair lending training program.

Fair lending training requires more than information about technical aspects of compliance, policies, and regulations. It requires analysis and understanding of historical patterns of discrimination as well as insight into human interactions. Web-based training is inadequate because discrimination is a complex issue, in which human interactions, behaviors, and experiences are important. In fact, the SunTrust program suggests that fair lending training is not important to the bank. SunTrust needs to base its program on face-to-face trainings through multiple venues which offer opportunities to explore issues in depth and learn through questions and answers about the human side of discrimination in addition to the regulatory aspects. We recommend that SunTrust work with an outside agency, such as the North Carolina Fair Housing Center ("Fair Housing Center") to design more effective training.

SunTrust's description of its fair lending compliance program includes data analysis and reviews of samples of loans and new products. However, the program lacks a paired testing program, which is a significant weakness. CRA-NC believes that SunTrust's fair lending compliance program can be strengthened through a paired testing program to examine fair lending compliance in the pre-application stage for different income levels. When the Fair Housing Center conducted paired testing of SunTrust Bank and Mortgage Company, it found discrepancies in the way upper-income African American mortgage applicants were treated when compared to upper-income White applicants. Such sample testing provides valuable information about fair lending at the local branch level, allowing the bank to recognize and address weaknesses. SunTrust should coordinate with an outside agency, such as the Fair Housing Center, to conduct regular fair lending tests at the branch and mortgage office level and use the results of those tests to evaluate their compliance and training programs.

Branch Closures

According to the bank's July 21st response, SunTrust is still evaluating the branch distribution network and considering which branch offices to close as a result of merger-related overlap. However, SunTrust has identified

61 branches that will be closed for reasons unrelated to the merger, such as such as economic performance, facility size or condition. The information regarding those 61 closures has been kept confidential. We ask that the information about those 61 branches be made public, since it will be the public that is affected by the closures.

News reports indicate that the Carolinas banking group will include 254 branches. Since current FDIC information shows that National Commerce has 267 branches in North and South Carolina, CRA-NC concludes that at least 13 branches in the Carolinas will be closed by SunTrust. Since there is no overlap in branch presence in the Carolinas between the two banks, we presume that these 13 branches will be closed for reasons unrelated to the merger. We ask that the Federal Reserve require SunTrust to provide information on any branch in the Carolinas that will be closed, the income level of the census tract, and the reason for the branch closure. Such information should not be considered confidential because it will affect consumers and communities.

CRA-NC has concerns about the effect of these branch closures, particularly those in LMI census tracts and in rural areas, will have on their communities. Branch closures affect individuals and families by limiting access to financial services, which drives consumers to costly fringe financial services. Branch closures also affect businesses and communities. Small business owners in rural areas tend to rely on local banks for financing and rural communities depend on banks for commercial development.

In addition to providing credit products and services in communities, bank branches often act as an anchor business in commercial and downtown areas. Since a branch closure results in a vacant building, it has a spatial impact on the community. Branch offices that are vacant and abandoned contribute to blight.

Bank branch closings can offer opportunities for reinvestment in communities or they can leave a legacy of disinvestment and decay. We are concerned that without a proactive plan, branch closures by SunTrust will have a negative impact on communities.

Conclusion

CRA-NC is unsatisfied with SunTrust's response to the Federal Reserve's questions. National Commerce has failed its responsibility to the community and instituted a mortgage pricing policy that has a disparate and adverse impact on African Americans. We ask that SunTrust provide a comprehensive plan to improve lending to minority and low-income borrowers. We ask that SunTrust provide additional information about branch closures throughout its footprint. We also request that SunTrust develop a more comprehensive fair lending training and compliance program, particularly given both banks' poor record of lending to African Americans as detailed in previous comments submitted by CRA-NC and the Fair Housing Center. We continue to oppose the merger until SunTrust has demonstrated a real commitment to address our concerns.

CRA-NC's Board of Directors is composed of a diverse group of leaders that represent the interests of minority and low- and moderate-income communities throughout North Carolina. They share the concerns expressed in this comment. The letter and data analysis was drafted by Tanya Wolfram, Director of Research for CRA-NC. The collaborative effort of staff and community is a testament to the conviction that the lending practices of National Commerce Financial have negatively impacted our community.

Sincerely,

Peter Skillern
Executive Director

cc.

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