



**CRA Decision #173  
March 2016**

February 26, 2016  
Nancy Stiles, P.C.  
Partner  
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3299 K Street, N.W., Suite 100  
Washington, DC 20007

Re: Applications to merge Inter-State Federal Savings and Loan Association of Kansas City, Kansas City, Kansas with and into First Federal Bank of Kansas City, Kansas City, Missouri, and Notice of Bylaw Amendment by First Federal Bank of Kansas City, Kansas City, Missouri.

OCC Control Nos.: 2015-WE-Combination-144203

2015-WE-AmendBylawCharter-144199

Charter No. 702825

Dear Ms. Stiles:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application to merge Inter-State Federal Savings and Loan Association of Kansas City, Kansas City, Kansas (Inter-State) with and into First Federal Bank of Kansas City, Kansas City, Missouri (First Federal), under the charter and title of the latter. This letter also serves as the OCC's non-objection to the bylaw amendment to change the number of directors of the resulting institution to 11. This approval is granted based on a thorough review of all information available, and additional information available to the OCC, including commitments and representations made in the application, merger agreement, and those of your representatives.

**I. The Transaction**

First Federal is a federal mutual thrift that has been in operation since 1934. First Federal has seven offices throughout Missouri, with its home office in Kansas City, Missouri.

Inter-State is a federal mutual thrift that has been in operation since 1889, with its main office in Kansas City, Kansas and four additional branches, all in Kansas.

First Federal applied for approval to merge Inter-State with and into First Federal, under the charter and title of the latter. Related to this merger, First Federal also filed a notice of bylaw amendment to change the number of directors on the board of the resulting institution to 11. The

application states that the resulting institution will remain a mutual institution. Inter-State's home office, along with its branches, will become branches of First Federal.<sup>1</sup>

## **II. Legal Authority for the Transaction**

First Federal has requested the OCC's prior approval to acquire Inter-State under the Bank Merger Act, 12 USC 1828(c) (BMA), as well as 12 CFR 163.22(a). Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA 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. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 USC 1828(c)(11). In addition, the OCC may not approve a merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 USC 1828(c)(13). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 USC 1828(c)(5) (as amended by section 604 of Dodd-Frank). We considered these factors and found them consistent with approval.

Inter-State's home office and branches will be retained as branches of First Federal. 12 USC 1464(r) provides that no Federal savings association may establish or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan under the Internal Revenue Code or qualifies as a qualified thrift lender under 12 USC 1467a(m). Also, no out-of-state branch may be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in the state would qualify the branches as a whole, were they otherwise eligible, for treating as a domestic building and loan or as a qualified thrift lender. First Federal is a qualified thrift lender.

## **III. Community Reinvestment Act**

The Community Reinvestment Act (CRA) requires the OCC to take into account the records of banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income (LMI) neighborhoods, when evaluating applications under the BMA. The OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. Under the regulations implementing the CRA, a bank's record of performance may be the basis for denying or conditioning approval of an application subject to the BMA. 12 CFR 195.29(d). For the reasons described below, after a review of the banks' records, information provided by First Federal in response to public comments relating to the proposed transaction, information provided by First Federal in response to additional information requests from the OCC, and

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<sup>1</sup> The transaction was reviewed pursuant to 12 CFR 163.22.

supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, the OCC has concluded that the banks' records of helping to meet the needs of their communities support approval of this application, subject to the condition discussed in Part IV.C of this letter.

#### **A. First Federal Bank of Kansas City**

First Federal's most recent CRA PE, dated January 28, 2013, assigned the bank an overall "Satisfactory" rating.<sup>2</sup> The major factors supporting First Federal's overall "Satisfactory" rating were: (i) a more than reasonable loan-to-deposit ratio; (ii) a majority of loans made in its assessment area (AA); (iii) an overall distribution of loans to borrowers of different income levels that showed reasonable penetration; and (iv) an adequate level of responsiveness to meeting community development (CD) needs of the AA through CD lending, investments, and services.

First Federal originates loans for its own portfolio and for sale in the secondary market, and it emphasizes one-to-four-family home loans. Its home loan products include various fixed rate and adjustable rate mortgage loans, Federal Housing Administration (FHA) and Veteran Administration (VA) loans, home equity lines of credit, home finance and home improvement loans, bridge loans to assist persons selling one home and purchasing another home, single family construction loans, and unsecured home improvement loans for up to \$15,000. First Federal also makes a limited amount of land loans (including construction and land development loans), auto loans, and other consumer loans. First Federal does not engage in commercial lending such as small business lending or commercial real estate lending. First Federal has represented that it intends to operate under substantially the same business model after the merger with Inter-State.

#### **B. Inter-State FS&LA of Kansas City**

Inter-State's most recent CRA PE, dated March 24, 2014, assigned the bank an overall "Satisfactory" rating.<sup>3</sup> The following points summarize Inter-State's lending test performance:

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<sup>2</sup> The OCC evaluated First Federal's CRA performance under the lending and community development tests applicable to an intermediate small bank on January 28, 2013. The evaluation covered the period between January 1, 2009 and December 31, 2011 for loans originated and purchased. The evaluation period for community development loans, investments, and services was January 1, 2009 through January 28, 2012. The CRA PE assigned First Federal overall "Satisfactory" ratings on the lending and community development tests. A copy of the CRA PE is available at: <http://www.occ.gov/static/cra/craeval/apr13/702825.pdf>.

<sup>3</sup> The OCC evaluated Inter-State's CRA performance under the standards applicable to a small bank on March 24, 2014, and focused primarily on the lending test. The CRA PE covered the period from January 1, 2009 through December 31, 2013. The CRA evaluation considered all home mortgage loans reported pursuant to the Home Mortgage Disclosure Act (HMDA) that were originated in 2012 and 2013. The CRA evaluation only reviewed HMDA reportable loan products because such loans represented over 99 percent of Inter-State's loan portfolio as of December 31, 2013. A copy of the 2014 CRA PE is available at: <http://www.occ.gov/static/cra/craeval/jun14/704414.pdf>.

(i) it originated a majority of its loans inside its AA; (ii) the distribution of loans to borrowers of different income levels reflected excellent penetration; and (iii) the geographic distribution of loans reflected excellent dispersion in its AA.

Inter-State offers first lien fixed rate and adjustable rate conventional mortgage loans, along with one loan fully secured by deposits.<sup>4</sup> Inter-State does not make FHA or VA loans. Inter-State holds in its portfolio and services all loans that it originates.

#### **IV. Public Comments and Analysis**

The OCC received two public comments, which the OCC has considered in its decision process. The comments addressed First Federal's and Inter-State's records of helping to meet the needs of their communities, particularly their lending in census tracts in the Kansas City MO/KS metropolitan statistical area (MSA) with majority-minority populations.

The first commenter raised four concerns regarding First Federal's and Inter-State's business practices. Specifically, that commenter asserted that, based on HMDA data, First Federal has a significantly worse record of lending to minorities than other financial institutions with operations in the MSA; the commenter also asserted that several specific financial institutions performed better than First Federal. In that context, the commenter stated that First Federal's percentage of loans in majority-minority census tracts was consistently lower than the MSA aggregate for conventional home purchase, FHA purchase, and home refinance loans for 2011 through 2013, with particularly poor performance with respect to home refinance loans. The commenter asserted that HMDA data make clear that both First Federal and Inter-State conduct only minimal lending in distressed census tracts occupied by minorities and LMI persons, a level that is not commensurate with their capacities as financial institutions that engage only in home loans. The commenter asserted that First Federal had violated both the Fair Housing Act and the Equal Credit Opportunity Act.

Further, the commenter asserted that First Federal closed its Grandview, Missouri, branch, its only branch located in a majority-minority census tract, in 2011. In that context, the commenter stated that First Federal's remaining branches are located in predominantly white census tracts outside the urban core,<sup>5</sup> and First Federal has stated on its Web site that it is looking forward to extending services to customers in Johnson County, Kansas, which the commenter asserted is primarily composed of middle- and upper-income census tracts. The commenter also stated that First Federal has conducted its most recent homeownership training classes in middle- and upper-income suburbs of Kansas City, Missouri.

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<sup>4</sup> Inter-State also does not make commercial loans.

<sup>5</sup> Exhibit E to the commenter's letter at p.5 defines the "urban core" to include North Kansas City, Missouri, and Sugar Creek, Missouri, along with portions of Kansas City, Missouri; Kansas City, Kansas; Independence, Missouri; and Johnson County, Kansas. The same Exhibit defines the "inner core" to include the inner cities of Kansas City, Kansas, and Kansas City, Missouri. However, the Exhibit does not clearly state what it considers to be the boundaries of those inner cities.

In addition, the commenter asserted that Inter-State has an extremely low loan-to-deposit ratio. In that context, the commenter stated that, of the 13 thrifts in the MSA, Inter-State has the lowest loan-to-deposit ratio by a significant margin.

Finally, the commenter asserted that First Federal has made no CD loans. In that context, the commenter stated that First Federal had made some CD investments in the nature of small contributions to community agencies, purchased a government guaranteed bond secured by mortgages to LMI consumers, and made a \$65,000 deposit into a minority-owned financial institution. However, the commenter stated that there was no information concerning whether those activities benefited minority or LMI census tracts.

The second commenter joined in the concerns raised by the first commenter.<sup>6</sup> In addition, the second commenter raised several other issues. The commenter asserted that First Federal had not responded to the letter of the first commenter or its request for a meeting.<sup>7</sup> The commenter also asserted that it had filed a fair housing complaint against First Federal with the Department of Housing and Urban Development (HUD) alleging violations of the Fair Housing Act. In that context, the commenter stated that its complaint was based on the concerns set forth in the first comment letter. In addition, the commenter stated that First Federal failed to market its products to minority borrowers and communities and that First Federal designated its AA in a way that excluded areas of high minority population.

The first comment letter contained a request that the OCC deny the application or approve the application subject to several conditions: (i) First Federal should be required to invest 0.5 percent of its deposit base into a revolving loan fund to provide loans to rehabilitate properties; (ii) First Federal should designate one loan officer as a full-time urban originator of loans, with primary emphasis on minority and low-income areas; and (iii) First Federal should develop a plan to raise the loan-to-deposit ratio for current Inter-State branches to 75 percent within five years or some other feasible length of time. The first comment letter also contained a request for an informal meeting with the OCC, asserting that: (i) the public portions of the application were difficult to locate; (ii) local government CD officials might be available to describe credit needs and challenges in the minority community, but they might not wish to make written statements; (iii) local CD groups and industry could share perspectives to provide needed insight to help regulators better understand the local performance context in light of changes in the thrift agency and housing conditions; (iv) the commenters had not had sufficient time to conduct outreach to identify customers that could share their experiences and needs; and (v) an in-person meeting would assure that regulators could receive answers to questions concerning overall lending in the

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<sup>6</sup> The parties that signed the first comment letter also signed the second comment letter. However, an additional party signed the second comment letter but not the first comment letter.

<sup>7</sup> The first comment letter contains a request for an informal meeting with the OCC. That letter does not contain any express request for a meeting with First Federal. However, the second comment letter advises that the commenters had sent a letter to First Federal on June 19, 2015 requesting HMDA data and a meeting to address the commenters' concerns.

region, the larger area economy, and neighborhood economies, which might not be addressed by written submissions. The second comment letter contained a request that the OCC not approve the merger until the fair housing complaint was resolved.

#### **A. CRA and Convenience and Needs**

In deciding whether to approve the proposed transaction, the OCC considers the banks' CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served. Although these factors are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (Mar. 2007), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. In contrast, a convenience and needs assessment considers how the merged entity will serve the needs of its communities on a prospective basis.

The commenters expressed concerns regarding the extent to which the two banks have complied with fair lending and CRA requirements. The commenters' concerns focused on First Federal's, and, to a lesser extent, Inter-State's lending performance and the proposed assessment area. The banks' CRA performance and the probable effect of the proposed transaction on the convenience and needs of the communities to be served are discussed below.

##### ***i. CRA Performance***

As discussed above, First Federal received an overall "Satisfactory" rating in its most recent CRA PE. The CRA PE describes the institution and the performance context factors that were taken into consideration when assessing the bank's performance. The CRA PE describes First Federal as a mutual savings bank headquartered in Kansas City, Missouri, with seven full-service facilities that offer a full range of loan and deposit products, one mortgage loan production office, and one non-branch operations facility, all located within the AA. The CRA PE indicates that, at the time of the evaluation, First Federal had one AA, which consisted of portions of the Kansas City, MO/KS MSA: all of Johnson County in Kansas, and all of Jackson County along with portions of Cass, Clay, and Platte Counties, in Missouri. The CRA PE notes that First Federal is a residential mortgage lender that operates as a community-oriented financial institution, and its primary business focus is residential real estate lending.<sup>8</sup>

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<sup>8</sup> First Federal originates approximately 50 percent of its single-family mortgage loans through the purchase of information on potential borrowers from outside its AA. It sells most of those loans in the secondary market. Within its retail branch network, First Federal primarily originates loans through home-purchase referrals from local realtors. However, more recently, First Federal has begun purchasing Internet leads for loans in its AA.

In 2013, First Federal originated 518 loans in the AA, with a total dollar amount of \$101,382,002. In 2014, the number of loans that First Federal originated in the AA decreased to 479, but the total dollar amount increased to \$105,589,949. In 2015, First Federal originated 627 loans in the AA, and the total dollar amount increased to \$147,031,605.

As an intermediate small bank, First Federal's performance was evaluated under the lending test and the CD test. First Federal received an overall "Satisfactory" rating for the lending test. The CRA PE indicates that First Federal's quarterly average loan-to-deposit ratio was reasonable at 88 percent.<sup>9</sup> The CRA PE states that First Federal is a traditional thrift that primarily offers residential loans, with 60 percent of its loans originated inside its AA.<sup>10</sup> The CRA PE also states that First Federal's performance was reasonable for originating home mortgage loans to borrowers of different incomes in its AA. The CRA PE indicates that First Federal's overall geographic dispersion of loans in the Kansas City, MO/KS MSA was reasonable.

As noted above, the CRA PE period covered 2009-2011. From May 2009 through December 2013, First Federal primarily originated refinance loans based on information provided by a non-bank mortgage lender concerning prospective customers. During that period, First Federal contracted with this non-bank mortgage lender to provide loans to borrowers in several states. The non-bank mortgage lender chose not to renew First Federal's contract in one state for 2014, and First Federal chose to terminate the entire relationship. Since terminating that relationship, First Federal has continued to accept applications for refinance loans; however, First Federal has not taken any specific action to increase the volume of refinance lending and has made primarily loans for home purchases with limited refinance lending.<sup>11</sup>

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<sup>9</sup> First Federal's Consolidated Report of Condition and Income dated September 30, 2015 reflects a loan-to-deposit ratio of 104.66 percent.

<sup>10</sup> By dollar amount, 64 percent of First Federal's loans were originated in the AA.

<sup>11</sup> In 2014, First Federal originated 215 conventional refinance loans out of a total of 522 conventional mortgage loans. Of those 215 refinance loans, First Federal made one loan in majority-minority census tracts in its AA, no loans in majority-minority census tracts in the Kansas City, MO/KS MSA outside its AA, and eleven in majority-minority census tracts outside the MSA. Six of the 215 refinance loans were made to minority borrowers (regardless of the location of the census tract) in its AA, none were made to minority borrowers in the Kansas City, MO/KS MSA outside its AA, and eleven were made to minority borrowers outside the MSA.

During the same year, First Federal made seven FHA refinance loans. Of those seven refinance loans, First Federal made two loans in majority-minority census tracts in its AA, and no loans in majority-minority census tracts outside its AA (inside or outside the Kansas City, MO/KS MSA). None of the FHA refinance loans were made to minority borrowers.

In the same year, First Federal made 322 VA refinance loans. Of the 322 VA refinance loans, First Federal made no loans in majority-minority census tracts in its AA or elsewhere in the Kansas City, MO/KS MSA and 93 loans in majority-minority census tracts outside the MSA. (First Federal made seven VA refinance loans inside its AA and no loans elsewhere in the MSA.) One loan was made to a minority borrower inside the AA, and 46 loans were made to minority borrowers outside the MSA.

In 2013, First Federal originated 1,230 mortgage loans: 444 home purchase loans, 784 refinance loans, and 2 home improvement loans. Of those loans, First Federal made 43 home purchase loans and 75 refinance loans to minority borrowers. During that year, 69 out of 441 denied applications involved minority applicants or co-applicants. In 2014, First Federal originated 1,067 mortgage loans: 522 home purchase loans, 544 refinance loans, and one home improvement loans. Of those loans, First Federal made 57 home purchase loans and 63 refinance loans to minority borrowers. During that year, 107 out of 571 denied loan applications involved minority applicants or co-applicants. (First Federal made no home improvement loans to minority borrowers in either year.)

First Federal also received an overall “Satisfactory” rating on the CD test. The CRA PE states that First Federal had no CD loans.<sup>12</sup> However, the CRA PE also notes that First Federal’s CD investments were adequate, with qualified investments of \$1,100,000 including a \$1,000,000 GNMA bond purchase, \$65,000 in deposits with a minority-owned financial institution, and \$13,000 in CD donations to agencies that provide affordable housing and community services. The CRA PE also indicates that First Federal’s CD services were adequate, as it provided expertise to five agencies providing affordable housing, proactively reached low- to moderate-income borrowers by conducting first-time home buyer classes that provided education on the entire home buying process, offered various products at seven retail branches that were accessible by customers of various income levels, and offered specialized deposit products targeted to LMI customers.

As discussed above, Inter-State received an overall “Satisfactory” rating in its most recent CRA PE. The CRA PE describes the institution and the performance context factors that were taken into consideration when assessing the bank’s performance. The CRA PE describes Inter-State as a mutual savings bank headquartered in Kansas City, Kansas, operating from its home office in downtown Kansas City, Kansas, and four branch offices located throughout the Kansas side of the Kansas City, MO/KS MSA. The CRA PE indicates that, at the time of the evaluation, Inter-State had one AA, which consisted of Johnson and Wyandotte Counties in Kansas. The CRA PE notes that Inter-State offers traditional banking products, one-on-one customer service, and low-fee deposit and loan products at all branches.

As a small bank, Inter-State’s performance was evaluated primarily under the lending test. Inter-State received an overall “Satisfactory” rating for the lending test. The CRA PE indicates that Inter-State’s quarterly average loan-to-deposit ratio was less than reasonable at 33 percent. The CRA PE states that Inter-State originated 57 percent of its loans inside its AA.<sup>13</sup> The CRA PE also states that Inter-State’s performance was excellent for originating home mortgage loans to borrowers of different incomes in its AA. The CRA PE indicates that Inter-State’s overall geographic dispersion of loans in the Kansas City, MO/KS MSA was excellent.

## *ii. Convenience and Needs*

The commenters expressed concerns regarding the extent to which First Federal and Inter-State will serve the credit needs of their communities. As discussed above, the BMA requires the OCC to take into consideration the convenience and needs of the community to be served. In

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From 2011 to 2014, 44 percent of loan applications, and 42 percent of loan originations, at First Federal involved refinance loans. In 2014, 29.7 percent of loan applications, and 24.5 percent of loan originations, at First Federal involved refinance loans.

<sup>12</sup> In its response, First Federal acknowledges that it has made no CD loans. As discussed below, First Federal asserts that CD lending is a form of commercial lending. First Federal advises that it does not engage in commercial lending, and therefore, CD lending is outside its area of expertise.

<sup>13</sup> By dollar amount, 54 percent of Inter-State’s loans were originated in the AA.

considering the convenience and needs of the community to be served, the OCC considers the probable effects of the merger on the community to be served, including any planned office closings or reductions in service that would follow consummation of the proposed transaction. Moreover, the OCC considers additional relevant factors, including the resulting savings association's ability and plans to provide expanded or less costly services to the community.

**a. Branch Network and Assessment Areas**

In considering how First Federal will serve the convenience and needs of its communities following consummation of the proposed transaction, the OCC considered how First Federal has served its communities both prior to and since the PE described above and whether the resulting bank's business plan will further efforts to serve the convenience and needs of its communities, consistent with its stated business philosophy of engaging almost exclusively in one- to four-family home loans. As discussed above, First Federal represented that its AA is smaller than the Kansas City, MO/KS MSA. First Federal represented that it currently operates seven branches in the MSA. First Federal further represented that four of its branches are located in low- or moderate-income census tracts, and one of those four is also located in a majority-minority census tract.<sup>14</sup>

With respect to the Grandview branch, First Federal asserted its belief that closing the branch in 2011 was prudent, was in the best interest of the safe and sound operation of First Federal, and had no material impact on the availability of loans in the area. In that context, First Federal represented that, in the wake of the recession, First Federal experienced negative loan growth, reduced interest margins, reduced profitability, reduced ability to attract new deposits and loans, and reduced ability to develop new revenue streams. First Federal further represented that the Kansas City area experienced high unemployment rates and high rates of serious delinquency on home loans. First Federal represented that it performed an analysis of its branches in 2011 as part of an effort to operate more efficiently, and the analysis showed that the Grandview branch had a declining deposit base, a declining net interest margin, and a negative impact on profitability. First Federal represented that it could not sell the branch because it was not attractive to other banks, and closing the branch would have minimal impact on the area because the branch had a smaller share of deposits than the five other banks with branches in the Grandview area. First Federal represented that it provided the required notice to the OCC and to customers before closing the branch, and it received no comment letters.<sup>15</sup> First Federal further represented that it did not modify its AA or discontinue offering loans in the area after it closed the branch.

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<sup>14</sup> First Federal also represented that two of its other branches were located in census tracts adjacent to one or more majority-minority census tracts, and two branches were located in middle-income census tracts adjacent to one or more low- or moderate-income census tracts.

<sup>15</sup> When a depository institution proposes to close any branch, it must provide notice to the appropriate federal banking agency and to customers. *See* 12 USC 1831r-1(a) and (b).

As discussed above, First Federal only includes part of the Kansas City, MO/KS MSA in its AA. A savings association may choose to adopt only a portion of an MSA as its AA, so long as it complies with the CRA regulation requirement for AAs. By regulation, the AA of a savings association must consist generally of one or more MSAs or metropolitan divisions, or one or more contiguous political subdivisions. 12 CFR 195.41(c)(1). The AA must also include the geographies in which the savings association has its main office, its branches, and its deposit-taking ATMs. 12 CFR 195.41(c)(2). The savings association may adjust the boundaries of its AA to include only the portion of a political subdivision that it reasonably can be expected to serve. 12 CFR 195.41(d). It may be appropriate for an AA to include only a portion of a political subdivision if the AA would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). CRA Q&A \_\_\_\_\_.41(d)-1, *published in* 75 Fed. Reg. 11,642, 11,646 (Mar. 11, 2010). First Federal represented that its current AA includes part of the urban core and the inner core of the MSA. First Federal's current AA does not include Wyandotte County, Kansas, which contains Kansas City, Kansas; however, First Federal represented that it plans to include all of Inter-State's current AA in its AA after the merger. Inter-State's current AA includes all of Wyandotte County, Kansas.

#### **b. Community Development Activities**

The CRA regulation and guidance provide that savings associations may receive CRA consideration for CD activities conducted in distressed or underserved nonmetropolitan middle-income geographies. 12 CFR 195.12(g)(4)(iii). The CRA performance criteria for intermediate small savings associations expressly include in CD activities: (i) the number and amount of CD loans; (ii) the number and amount of qualified investments; (iii) the extent to which the savings association provides CD services; and (iv) the savings association's responsiveness through such activities to CD lending, investment, and services needs. 12 CFR 195.26(a)(2) and (c). One commenter expressed concern that First Federal made no CD loans and that there was no information showing whether First Federal's other CD activities benefitted minority communities or low- or moderate-income communities.

As discussed above, First Federal engages almost exclusively in one to four family home mortgage lending.<sup>16</sup> First Federal advised that it considers CD lending to be a form of commercial lending, and, therefore, it does not engage in CD lending. However, First Federal also advised that it engages in various CD investments and offers various CD services. First Federal stated that it offers a number of home buyer education classes, focusing on first time home buyers; of the attendees that provided income data, approximately 63 percent stated that they had incomes of less than \$56,000 (*i.e.*, approximately 80 percent of the median family income for First Federal's AA). With respect to deposits, First Federal represented that it offers several products that assist low- and moderate-income customers: (i) free checking accounts with a minimum opening balance of \$25; (ii) Saver's Choice certificate of deposit with a \$200

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<sup>16</sup> Inter-State is a small institution but not an intermediate small institution. Therefore, the CRA evaluation of Inter-State does not include the CD test.

minimum and the option to add to the account during the term in minimum amounts of \$25; and (iii) a Pay Yourself First program that allows customers to transfer \$25 monthly from a First Federal checking account to a savings account.

First Federal also pointed to several CD investments that it has made and that benefit its AA and LMI individuals and geographies. First Federal noted its \$65,000 deposit with a local community development financial institution, Central Bank of Kansas City. First Federal cited two investments in GNMA mortgage backed securities: (i) a \$1,000,000 security secured by eight, single-family home loans made to low- or moderate-income borrowers in the Kansas City, MO/KS MSA;<sup>17</sup> and (ii) a \$1,353,964 security secured by nine, single-family home loans made to low- or moderate-income borrowers within First Federal's AA.<sup>18</sup>

First Federal also stated that it regularly makes cash and in-kind contributions to various organizations that assist LMI persons. Some of those organizations provide assistance in various aspects of housing and homeownership: (i) Neighborhood Housing Services of Kansas City; (ii) Rebuilding Together Clay County; (iii) United Way of Greater Kansas City for the Neighborhood Self Help Fund; (iv) Habitat for Humanity Kansas City; and (v) Hillcrest Transitional Housing. Other organizations provide assistance in education, such as the Missouri Colleges Fund and Bright Future Funds' Strong City School Fund. First Federal also represented that it contributes funds to local high schools to provide one-time merit based scholarships to students.

First Federal represented that it encourages its directors, officers, marketing managers, and other employees to participate in local civic and community groups. First Federal asserts that such participation allows its personnel to promote First Federal products and services that benefit LMI and minority borrowers as well as to obtain information on community needs and opportunities to participate in programs that benefit the community. First Federal asserted that its officers, directors, and managers participate in a number of organizations: (i) Rebuilding Together Clay County; (ii) Eastern Jackson County Hillcrest Transitional Housing; (iii) Strong City School Fund; (iv) Heartland Center for Behavioral Change; and (v) Kansas City Regional Association of Realtors and the organization's Charitable Foundation.

First Federal represented that Inter-State also engages in various CD services and activities. First Federal advised that Inter-State has been active in the Community Housing Investment Partnership (CHIP), including as a founding member of a related Lenders Consortium.<sup>19</sup> First

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<sup>17</sup> Seven of the eight properties were located in First Federal's AA. One of the properties was in a low- or moderate-income census tract in First Federal's AA, and one other property was located in a low- or moderate-income census tract elsewhere in the Kansas City, MO/KS MSA.

<sup>18</sup> Three of the nine properties were located in low- or moderate-income census tracts. First Federal purchased that security on July 6, 2015, after the first commenter provided comments.

<sup>19</sup> First Federal advised that CHIP has been able to make few loans due to limited funding. However, First Federal advised that Inter-State remains an approved CHIP lender and that First Federal plans to become an approved CHIP lender after the merger.

Federal represented that the Consortium was also instrumental in bringing the Local Initiatives Support Corporation (LISC) to Kansas City, and that Inter-State is a funding partner of LISC. First Federal represented that Inter-State has made cash contributions to several organizations: (i) Greater Kansas City LISC; (ii) YMCA of Greater Kansas City;<sup>20</sup> (iii) Neighborhood Housing Services; (iv) American Red Cross;<sup>21</sup> (v) Kansas City Habitat for Humanity; (vi) Donnelly College, and (vii) El Centro. First Federal further represented that a director of Inter-State was also the chair of Downtown Shareholders of Kansas City Kansas.

In its response, First Federal represented that, after the merger, it plans to host an annual symposium at which community leaders and organizations can provide information to First Federal concerning the need for affordable housing and home loans, as well as opportunities to partner with their organizations, within its AA. First Federal offered to include the commenters among the parties to be invited to participate in the symposium upon request. First Federal has not held a separate meeting with commenters in the context of this application.

### **c. Loan-to-Deposit Ratio**

First Federal represented that its business strategy will remedy any issues relating to Inter-State's low loan-to-deposit ratio. First Federal advised that it will continue to operate under its present business strategy, which emphasizes one to four family home lending and does not include commercial lending. First Federal stated that it expects the combined institution to have a loan-to-deposit ratio of 85 percent, with a similar ratio going forward.<sup>22</sup>

### **B. Fair Lending**

The commenters also expressed concerns regarding First Federal's level of lending in majority-minority areas within the Kansas City, MO/KS MSA, asserting that First Federal has a worse record of lending to minorities than other financial institutions operating in the MSA. One commenter also asserted that First Federal failed to market its loan products to minority borrowers and communities.

Pursuant to 12 CFR 195.28(c), the results of the OCC's evaluation of a bank's CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices. The

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<sup>20</sup> First Federal represented that a significant portion of the contribution was intended to maintain operation of the YMCA's 8th Street Family Center, which is located in a low-income and majority-minority census tract in Kansas City, Kansas.

<sup>21</sup> First Federal represented that a majority of the contribution was earmarked for the renovation of the organization's local office in Kansas City, Kansas, which is located in a low-income and majority-minority census tract on Washington Boulevard.

<sup>22</sup> As noted above, First Federal's CRA PE indicates that it had a quarterly average loan-to-deposit ratio of 88 percent during that period. As of September 30, 2015, First Federal's Call Report indicates a loan-to-deposit ratio of approximately 105 percent. The OCC understands that First Federal has temporarily increased its loan portfolio in anticipation of the merger by purchasing loan pools to offset Inter-State's extremely low loan-to-deposit ratio.

OCC may lower the overall rating of an institution based on findings of discriminatory or other illegal credit practices in any geography by the bank or in any AA by any affiliate whose loans are considered as part of the bank's lending performance. First Federal's CRA PE dated January 28, 2013, noted that the OCC did not find evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs.

Regarding the lending concerns raised by the commenters, it should be noted that HMDA data alone are not adequate to provide a basis for concluding that a bank has engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities and efforts or contain information about other creditors' characteristics, lending activities, or efforts.

Since First Federal's 2013 CRA PE, the OCC has conducted a number of supervisory activities to assess fair lending risk. In considering the proposed transaction, the OCC reviewed First Federal's and Inter-State's 2013 HMDA data.<sup>23</sup> The OCC's review of First Federal's 2013 HMDA data in the Kansas City KS/MO MSA revealed lending data similar to that cited by the commenter in some areas. While First Federal had lower application volumes than other lenders in some categories or areas, it also had comparable or higher application volumes than other lenders in other categories or areas. After accounting for other information available to the OCC as part of its regulatory responsibilities including First Federal's emphasis on home purchase money lending, the OCC's reviews have not resulted in findings of discrimination related to First Federal's home mortgage lending.

In responding to the commenters' concerns, First Federal also asserted that its performance compares favorably with the performance of the other institutions specifically cited by the commenters as having better records of performance than First Federal in majority-minority census tracts in the MSA. First Federal represented that one bank cited by the commenters is significantly larger than First Federal and Inter-State combined in total assets and branch presence, and that the cited bank's AA consists of the entire MSA. First Federal represented that another bank cited by the commenters is a very large commercial bank with significant resources, and that bank's AA does not include the entire Kansas City, MO/KS MSA. With regard to a smaller savings association cited by the commenters, First Federal represented that it had made a number of FHA loans in minority census tracts, while the other savings association did not make FHA loans. In that context, First Federal asserted that FHA lending in minority census tracts should not be disregarded.

First Federal also represented that it offers several loan products designed to assist low- or moderate-income home buyers and first-time home buyers. First Federal stated that it offers FHA and VA loans that carry lower or no down payments and limits on points. First Federal

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<sup>23</sup> First Federal advised that the commenters' letters contained inaccuracies with respect to lending by First Federal and Inter-State, and it provided corrected information in its response.

represented that these favorable loan products are not currently offered by Inter-State and would be offered in its expanded AA after the merger. First Federal advised that it is an approved lender under the United States Department of Agriculture Rural Development Loan Program, which offers loans to low-, moderate-, and middle-income families that do not qualify for conventional financing. First Federal also represented that it has been certified to provide low-interest mortgage loans to qualified first-time home buyers and veterans by the Missouri Housing Development Commission (MHDC), and that the MHDC has recognized First Federal and several of its loan officers as high-level producers of loans.<sup>24</sup> First Federal advised that the Federal Home Loan Bank of Des Moines selected First Federal to receive grant funds under the 2013 Homeownership Fund program, which First Federal used to provide down payment assistance to six LMI borrowers. First Federal represented that Neighborhood Housing Services of Kansas City has advised that it is seeking an Affordable Housing Program grant, a portion of which could allow First Federal to act as a participating member lender.<sup>25</sup>

The OCC is also aware that commenters have filed a Fair Housing Act complaint against First Federal with HUD. The OCC understands that the parties have reached a conciliation agreement approved by HUD, which appears to resolve the commenters' concerns regarding the similar issues raised in both the complaint and the comment letters. The OCC will consider the actions of First Federal pursuant to the conciliation agreement in connection with its ongoing supervision of First Federal.<sup>26</sup>

### **C. Summary and Condition of Approval**

As stated above, the CRA requires that the OCC consider the records of the banks' performance in helping to meet the credit needs of their communities, including LMI individuals and geographies, when evaluating applications under the BMA. The OCC applies the convenience and needs standard, discussed above, when considering prospectively how the bank resulting from a proposed merger will help to serve its communities.

First Federal's CRA PE identified areas of strength for the bank, including its loan-to-deposit ratio and CD services such as first-time home buyer classes and loan products accessible by customers of various income levels. The proposed merger will expand First Federal's AA to include all of Kansas City, Kansas, as well as currently including Kansas City, Missouri, both areas that include substantial LMI, and minority populations. In addition, the proposed merger will expand First Federal's branch network by adding Inter-State's branches, including two

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<sup>24</sup> First Federal received a Bronze Award from MHDC in 2012 for originating 52 loans, as well as another Bronze Award in 2014 for originating 30 loans. One of First Federal's loan officers received a Gold Award from MHDC in 2011 for originating 47 loans, as well as the only Platinum Award that MHDC awarded in 2014 for originating 33 loans. In addition, another First Federal loan officer received a Bronze Award from MHDC in 2011 for originating 16 loans.

<sup>25</sup> First Federal did not advise whether it has originated any loans to date under that program.

<sup>26</sup> If HUD has reasonable cause to believe that a financial institution has breached a conciliation agreement, HUD has the authority to refer the matter to the Department of Justice for civil action. *See* 42 U.S.C. § 3609(c).

branches located in majority-minority census tracts. As a result, First Federal products that can help to meet the financial needs of LMI persons and neighborhoods, including FHA and VA mortgage loans that are not offered by Inter-State, will be available to those customers and in those areas.

The OCC's review and public comments on the proposed transaction also identified areas of concern, particularly with regard to First Federal's provision of certain products, such as refinance loans, to individuals and geographies throughout its AA, including to LMI and minority individuals and geographies. Since the termination of its relationship with a nonbank mortgage lender, First Federal has not taken any action to make all of its home mortgage refinance loan products widely available to the communities it serves. Consequently, continuing concern exists regarding how the resulting institution would serve the needs of its communities, in particular the mortgage needs of LMI individuals and geographies and minority individuals and geographies.

Accordingly, based upon the OCC's review of the respective records of the institutions involved in the proposed transaction, the application, the public comments and First Federal's response to the comments, information provided by First Federal in response to requests for additional information by the OCC relating to the pending transaction, and supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, the application is approved, subject to the following condition:

First Federal shall submit a written CRA Plan to the OCC for review and written determination of no supervisory objection within 90 days of this decision.<sup>27</sup> First Federal's CRA Plan must comply with the following:

- (1) The CRA Plan must contain a description of the actions that are necessary and appropriate to ensure that, on a prospective basis, the bank is helping to meet the needs of its AA, including, but not limited to home refinance lending in LMI geographies and to LMI individuals.
- (2) The CRA Plan must describe how First Federal plans to offer and market its home mortgage products, particularly including refinance products, to individuals and geographies throughout its AA, including LMI and minority individuals and geographies.
- (3) In developing the CRA Plan, First Federal shall seek input from members of the public in its AA.
- (4) The CRA Plan must contain measurable goals and timetables for the achievement of those goals including the credit needs of LMI and minority individuals and geographies within the AA.

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<sup>27</sup> The CRA Plan shall be separate from the HUD conciliation agreement referenced above. However, the terms of the CRA Plan must be consistent with the requirements of that conciliation agreement.

(5) The CRA Plan shall specify which board committee(s) is responsible for overseeing the bank's actions toward fully meeting the goals and timetables outlined in the CRA Plan. In addition, the CRA Plan shall specify the frequency of First Federal's written progress reports to the board committee(s), and provide copies of all such reports to the OCC within 30 days of the relevant board or committee meeting. First Federal will also furnish to the OCC copies of the board or committee minutes describing the consideration and discussion of each report and any additional measures the board or committee directs to achieve full compliance with its obligations under the CRA Plan.

(6) The CRA Plan shall be effective upon written determination of no supervisory objection by the OCC, and First Federal shall make the CRA Plan available to the public, such as by posting the CRA Plan on its public Web site.

(7) At least 30 days prior to the commencement of the First Federal's CRA examination, the bank shall submit to the OCC, and make available to the public, a CRA Plan summary report that demonstrates the measurable results of the CRA Plan.

This condition of approval is a condition "imposed in writing by a Federal banking agency in connection with any action or any application, notice, or other request" within the meaning of 12 USC 1818. As such, the condition is enforceable under 12 USC 1818.

## **V. Bylaw Amendment**

Resulting from the merger, First Federal will acquire four more directors from Inter-State to sit on the board of First Federal, resulting in a total of 11 directors. As such, First Federal has filed notice for an amendment to their bylaws, to allow for 11 board members. Pursuant to 12 CFR 144.5, a mutual savings association's bylaws must set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OCC. 12 CFR 144.5(b)(8).

The OCC considered these factors and found them consistent with the applicable regulation. The OCC does not object to the proposed bylaw amendment.

## **VI. Consummation Requirements**

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waiver with respect to the proposed transaction will have been received prior to the transaction.

The merger must be consummated no earlier than 15 calendar days, and no later than 120 calendar days from the date of this approval letter unless the OCC grants an extension of time period for good cause.

On the business day prior to the date of consummation of the transaction, the chief financial officers of Inter-State and First Federal must certify in writing to the Director for District

Licensing (DDL) that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of their respective institutions as disclosed in the application. If additional information having a material adverse bearing on any feature of the application is brought to the attention of First Federal, Inter-State or the OCC since the date of the financial statements submitted with the application, First Federal must not consummate the transaction unless the information is presented to the DDL and the DDL provides written non-objection to consummate the transaction.

In addition, First Federal must submit the following information to the OCC Western District Licensing Division (WE/LIC) within the timeframe noted:

- No later than five calendar days after the date of consummation of the transaction, First Federal must file with WE/LIC a certification stating the effective date of the transaction and that the transaction has been consummated in accordance with all applicable laws and regulations, the application, and this letter.
- No later than 30 calendar days after the date of consummation of the transaction, First Federal shall advise each account holder whose withdrawable accounts in the resulting savings association would increase above \$250,000, or whose noninsured deposits would increase, as a result of the transaction of the effect of the transaction on insurance coverage. Promptly thereafter, First Federal must submit a copy of the notice to WE/LIC.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

First Federal Bank of Kansas City, Kansas City, Missouri  
OCC Control Nos.: 2015-WE-Combination-144203  
2015-WE-AmendBylawCharter-144199

A separate letter is enclosed requesting feedback on how we handled the referenced application. All correspondence regarding this application should reference the OCC control number. If you have any questions, contact David Finnegan at (720) 475-7650 or email [david.finnegan@occ.treas.gov](mailto:david.finnegan@occ.treas.gov).

Sincerely,

*signed*

Stephen A. Lybarger  
Deputy Comptroller for Licensing

Enclosures: Survey Letter