



**CRA Decision #169  
October 2015**

September 16, 2015

Ms. Jackie Prester, Esq.  
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165 Madison Avenue, Suite 2000  
Memphis, Tennessee 38103

Subject: Application for the merger of TrustAtlantic Bank, Raleigh, North Carolina with and into First Tennessee Bank, National Association, Memphis, Tennessee  
OCC Control No.: 2014-SO-Combination-141047 Charter No.: 336

Dear Ms. Prester:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the merger of TrustAtlantic Bank, Raleigh, North Carolina (TrustAtlantic) with and into First Tennessee Bank, National Association, Memphis, Tennessee (First Tennessee). This conditional approval is granted based on a thorough review of the application, other materials each of the banks and its representatives supplied, and additional information available to the OCC, including commitments and representations made in the application and by the banks' representatives during the application process.

**I. The Transaction**

TrustAtlantic is a wholly owned subsidiary of TrustAtlantic Financial Corporation, a bank holding company headquartered in Raleigh, North Carolina. TrustAtlantic is a state-chartered commercial bank. TrustAtlantic has its main office in Raleigh, North Carolina and operates four branches in North Carolina.

First Tennessee is a wholly owned subsidiary of First Horizon National Corporation, a bank holding company headquartered in Memphis, Tennessee. First Tennessee is a national bank with its main office in Memphis, Tennessee and operates over 200 branches in 23 states, including North Carolina.

First Horizon National Corporation submitted an application to the Federal Reserve Bank of St. Louis to acquire TrustAtlantic Financial Corporation through a merger transaction. Immediately following the consummation of the bank holding company merger, TrustAtlantic will merge with and into First Tennessee in an affiliated interstate merger transaction.

First Tennessee will retain two wholly owned operating subsidiaries of TrustAtlantic. Upon review of the activities conducted by TrustAtlantic's operating subsidiaries, the OCC has determined that such activities are legally permissible for national banks and may be performed by operating subsidiaries of a national bank.

## **II. Legal Authority for the Merger and the Bank Merger Act**

First Tennessee applied to the OCC for approval to merge TrustAtlantic with and into First Tennessee under the Bank Merger Act (BMA), 12 USC 1828(c). The OCC reviewed the proposed merger transaction under the criteria of the BMA and applicable OCC regulations and policies. 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 combatting money laundering activities. 12 USC 1828(c)(11). In addition, the OCC may not approve a merger if the resulting 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 the Dodd-Frank Act). The OCC considered these factors and found them consistent with approval of this application, subject to the condition noted in Section V.

## **III. Community Reinvestment Act**

The Community Reinvestment Act (CRA) requires the OCC to take into account the records of the 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 25.29(d). For the reasons described below, after a review of the banks' records, information provided by First Tennessee in response to public comments relating to the proposed transaction, and information provided by First Tennessee in response to additional information requests from the Board of Governors of the Federal Reserve System (FRB) and the OCC, the OCC has concluded that the banks' records of helping to meet the needs of their communities support approval of this application with the condition discussed in Section V. of this decision letter.

## **A. First Tennessee**

First Tennessee's most recent CRA PE, dated January 11, 2010, assigned the bank an overall "Satisfactory" rating.<sup>1</sup> The major factors supporting First Tennessee's overall "Satisfactory" rating were (i) the bank's lending levels reflected good responsiveness to its deposit market share and assessment area (AA) credit needs; (ii) the distribution of loans to borrowers of different income levels and to businesses of different sizes was good; (iii) the level of community development loans was good and a positive factor, reflecting responsiveness to varying needs in the AAs, including affordable housing, community services targeted to LMI individuals, economic development, and revitalization and stabilization of LMI areas in the AAs where the bank maintained an ongoing presence; (iv) an adequate level of qualified investments based on the investment opportunities and dollar volume of investments made in the AAs; (v) branch locations that were accessible in the AAs where the bank maintained an ongoing presence; and (vi) provision of a good level of community development services in the AAs where the bank maintained an ongoing presence. Three primary rating areas carried the greatest weight in determining First Tennessee's overall CRA rating because 99.9 percent of total deposits and branches were located in those AAs. These rating areas consisted of the Memphis, TN-MS-AR Multistate Metropolitan Area (Multistate MA); the Chattanooga, TN-GA Multistate MA; and the State of Tennessee.

## **B. TrustAtlantic**

TrustAtlantic's most recent CRA PE, dated August 22, 2013, assigned the bank an overall "Satisfactory" rating.<sup>2</sup> The major factors supporting TrustAtlantic's overall "Satisfactory" rating were (i) a reasonable average loan-to-deposit ratio, (ii) a majority of the bank's loans were originated within its AAs, (iii) an overall reasonable geographic distribution of loans within the AAs, (iv) a reasonable distribution of loans among borrowers of different income levels and businesses of different sizes, and (v) excellent responsiveness to the community development needs of its AAs through community development loans, qualified investments, and community development services. TrustAtlantic has two AAs: Wake County, North Carolina and Pitt County, North Carolina.

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<sup>1</sup> The OCC evaluated First Tennessee's CRA performance under the lending, investment, and service tests applicable to large banks on January 11, 2010. The evaluation covered the period between January 1, 2004, and December 31, 2009, for home mortgage loans, small loans to businesses, and the investment test. The evaluation period for community development loans, investments, services, and retail services was January 1, 2005, through December 31, 2009. The CRA PE assigned First Tennessee overall "High Satisfactory" ratings on the lending and service tests and an overall "Low Satisfactory" rating on the investment test. A copy of the CRA PE is available at: <http://www.occ.gov/static/cra/craeval/oct11/336.pdf>.

<sup>2</sup> The FDIC evaluated TrustAtlantic's CRA performance under the standards applicable to an intermediate small bank on August 22, 2013. The CRA PE considered all home mortgage loans reported pursuant to the Home Mortgage Disclosure Act (HMDA) originated in 2011 and 2012 and small business loans originated in 2012. Further, the CRA PE's community development test rating was based on a review of qualified community development lending, investment, and service activities since the previous CRA PE on May 4, 2010. A copy of the 2013 CRA PE is available at: [https://www2.fdic.gov/crapes/2013/35163\\_130822.PDF](https://www2.fdic.gov/crapes/2013/35163_130822.PDF).

#### **IV. Public Comment and Analysis**

The FRB received three public comments, which were forwarded to the OCC for consideration in its decision process. The comments were submitted by two commenters and address First Tennessee's and TrustAtlantic's records of helping to meet the needs of their communities, particularly LMI individuals and minority individuals, and more specifically African Americans and Hispanics.

One commenter, citing 2013 Home Mortgage Disclosure Act (HMDA) data, alleged that First Tennessee's lending demonstrated disparate denial rates for African American applicants as compared to white applicants. The same commenter expressed a general concern related to the number of applications First Tennessee received from, and number of originations to, African American and Hispanic individuals. Further, based on the departure of four commercial loan officers from TrustAtlantic, the commenter expressed concerns regarding the impact of the proposed transaction on the target. Based on these concerns, the commenter requested that the FRB extend the comment period and hold a public hearing.

The second commenter initially focused on First Tennessee's and TrustAtlantic's CRA PEs, and expressed concern that both banks are not meeting the needs of LMI communities and minority communities. In addition, the commenter alleged that the proposed transaction does not create a clear public benefit for the communities First Tennessee would serve in North Carolina and Tennessee. The commenter further asserted that the law requires that the regulatory agencies ensure that the public benefits outweigh the costs and negative effects of the proposed transaction.

With regard to First Tennessee, the second commenter alleged overall concerns with the bank's CRA PE, and particular concerns related to the Chattanooga Multistate MA. Specifically, the commenter alleged that the CRA PE cited a "very poor distribution of home purchase loans,"<sup>3</sup> and noted that the very poor performance with regard to home purchase loans was cited in the Chattanooga Multistate MA. In addition, citing language in the CRA PE, the commenter expressed concerns with First Tennessee's small business lending and stated that the bank's "percentage of loans to businesses with revenues of \$1 million or less was lower than the percentage of small businesses in the AA."<sup>4</sup> With regard to First Tennessee's small business lending as described in the CRA PE, the commenter also noted particular concern regarding the bank's poor performance in the Chattanooga Multistate MA. The commenter also noted that First Tennessee received an overall "Low Satisfactory" rating on the investment test.

As mentioned, the second commenter also expressed initial concerns related to TrustAtlantic's CRA performance. Specifically, the commenter alleged that TrustAtlantic's CRA PE cited poor

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<sup>3</sup> Specifically, the CRA PE concluded that the bank had very poor performance with regard to geographic distribution of home purchase loans in the Memphis Multistate MA. Further, the CRA PE concluded the bank's performance was poor with regard to geographic distribution of home purchase loans in the Chattanooga Multistate MA.

<sup>4</sup> The specific conclusion in the CRA PE related to the bank's performance in the Chattanooga Multistate MA.

penetration of home mortgage loans to LMI borrowers.<sup>5</sup> The commenter alleged specific concerns related to TrustAtlantic's home mortgage lending in 2011 and 2012 and with regard to the Wake County and Pitt County AAs.

In a follow-up comment letter, this same commenter reiterated the prior concerns. In addition, the commenter alleged that First Tennessee has not adequately met its responsibilities as required by HMDA to collect racial data on potential borrowers in Chattanooga, Knoxville, Memphis, and Nashville, Tennessee. The commenter also expressed concerns related to First Tennessee's level of home mortgage lending to African Americans in Chattanooga, Knoxville, Memphis, and Nashville, Tennessee, as compared to all lenders as a group. Further, the commenter expressed concerns related to the average number of loan applications First Tennessee received in LMI communities and minority communities as compared to the average number of loan applications the bank received in other communities. The commenter requested also that the proposed transaction not be approved until a clear public benefit is outlined.

#### **A. 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 community 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. A convenience and needs assessment considers how the merged entity will serve the needs of its community on a prospective basis.

The commenters expressed concerns regarding the extent to which the bank resulting from the proposed transaction would benefit the communities it serves. The commenters' concerns focused on First Tennessee's, and to a lesser extent, TrustAtlantic's, lending performance as well as First Tennessee's investment performance. The commenters' concerns regarding the banks' past records of performance form the basis of their assertion that the proposed transaction will not provide a public benefit for the North Carolina and Tennessee communities served by the banks. As previously discussed, the BMA requires the OCC to take into consideration the convenience and needs of the communities to be served when reviewing a proposed merger.<sup>6</sup>

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<sup>5</sup> The specific conclusion in the CRA PE related to the bank's performance in the Wake County AA.

<sup>6</sup> As noted in the text, the commenter refers to the need for the merger to create a "public benefit," specifically citing language in 12 USC 1828(c)(5)(B) that states, "[t]he responsible agency shall not approve...any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." The OCC has not determined that the proposed transaction would substantially lessen competition, tend to create a monopoly, or be in restraint of trade. Therefore, the statute does not require the OCC to find that the probable effect of the transaction in meeting the convenience and needs of the community to be served outweighs any such anticompetitive considerations. As required in every case under 12 USC 1828(c)(5), however, the OCC considers the convenience and needs of the community to be served.

## 1. Home Mortgage Lending

In responding to the commenters' lending-related concerns, First Tennessee represented that it sold its national home loan lending division in 2008. First Tennessee stated that this sale included the operational platform that had previously allowed First Tennessee to originate government-guaranteed and conventional home purchase loans that require escrow capabilities. First Tennessee maintained that it continues to offer home improvement, home refinance, and home purchase conventional loans that do not require escrow capabilities.

First Tennessee further represented that it entered into an agreement (covering 2008 – 2012) with PHH Mortgage Corporation (PHH) under which PHH actively managed the application acceptance, processing, underwriting, and closure of government-guaranteed and conventional home purchase loans that required escrow capabilities on behalf of First Tennessee. First Tennessee originated the loans as a correspondent of PHH, and PHH purchased the loans subsequent to their origination. These loans were reflected as home mortgage loans originated by First Tennessee on First Tennessee's HMDA loan/application register (LAR).

First Tennessee also represented that, beginning in 2012, it entered into three different agreements with Quicken Loans. Under the first agreement, First Tennessee provided prospective borrowers a toll-free number to contact Quicken Loans about government-guaranteed or conventional home purchase loans that required escrow capabilities. First Tennessee represented that, upon the expiration of this agreement in 2013, it entered into a second agreement, under which it marketed the availability of government-guaranteed and conventional home purchase loans that required escrow capabilities offered by Quicken Loans. First Tennessee has represented that, under its third and current agreement with Quicken Loans, First Tennessee's loan specialists assist customers in completing the entire application to apply for government-guaranteed and conventional home purchase loans that require escrow capabilities offered by Quicken Loans when customers indicate a need or preference for such products. First Tennessee represented that under these agreements with Quicken Loans it made 1,744 referrals in 2012, 4,066 in 2013, and 2,112 in 2014, but that this mortgage assistance activity is not included in First Tennessee's HMDA data. Moreover, First Tennessee stated that it is actively engaged with Quicken Loans and two other third-party lenders to negotiate correspondent relationships through which loans would be originated in First Tennessee's name and recorded on its HMDA-LAR to ensure that all of its volume and geographic lending goals for government-guaranteed and conventional home purchase mortgages requiring escrow accounts are met.<sup>7</sup> Under a modified correspondent relationship, such as those being negotiated by First Tennessee, a selling bank originates the loan in its own name, but the buyer performs one or all of the operational elements on behalf of the seller, such as processing, underwriting, and closing. Unlike in a referral arrangement, because the selling bank originates the loan in its own name, the loan is reflected on the selling bank's HMDA-LAR.

In addition to mortgages originated pursuant to these agreements, First Tennessee represented that the level of lending activity initiated directly by the bank has remained constant. First

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<sup>7</sup> First Tennessee represented that it anticipates that contract negotiations will be completed by November 30, 2015.

Tennessee represented that, in 2010 through 2014, it made 3,501 conventional home purchase loans that did not require escrow, amounting to \$1.2 billion; 853 home improvement loans, amounting to \$103 million; and 11,962 home mortgage refinancings that did not require escrow, amounting to \$2.4 billion.

In describing how First Tennessee plans to serve the credit needs of TrustAtlantic's current AAs, First Tennessee represented that it will offer its existing products and services in the areas currently served by TrustAtlantic. First Tennessee further represented that it is committed to achieving an overall target of 30 percent of its originated mortgage loans to LMI borrowers or in LMI geographies.<sup>8</sup> In addition to its overall target, First Tennessee represented that it has AA specific targets of 53.29 percent in the Chattanooga AA, 44.03 percent in the Memphis AA, and 28.65 percent in the Wake County AA for originated mortgage loans to LMI borrowers or in LMI geographies. First Tennessee also represented that its plan for achieving these targets includes (i) originating mortgage products that meet the needs of the LMI segment of the population through in-house loan products and through partnerships with third-party mortgage lenders; (ii) communicating the availability of the bank's mortgage offerings in LMI communities through targeted marketing promotions, the Hope Inside program,<sup>9</sup> and borrower outreach efforts; and (iii) augmenting the bank's origination efforts by purchasing qualifying loans in markets where demand for new loans proves insufficient to achieve the bank's goals.

## 2. Small Business Lending

Regarding commenters' concerns about First Tennessee's small business lending, First Tennessee represented that loans under the Small Business Administration's (SBA) 504 program are available to its customers,<sup>10</sup> and, in March 2015, began offering loans under the SBA 7(a) and CAPLine programs. First Tennessee represented that, although it has not originated any loans under the SBA 7(a) or CAPLine programs since the programs' inception at the bank, it is committed to obtaining preferred lender status once it originates the required minimum number<sup>11</sup> of SBA 7(a) loans to apply for such status. First Tennessee stated that it has established an internal target of 20 originations under the SBA 7(a) program annually once preferred lending

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<sup>8</sup> For the 2010 to 2014 period, First Tennessee represented that its total home mortgage loans to LMI borrowers ranged from 23.5 percent to 27.35 percent of total loans originated.

<sup>9</sup> First Tennessee stated that the Hope Inside program is part of the bank's partnership with Operation HOPE, which has a mission of strengthening the economy by focusing on empowering those who earn less than \$50,000. Through this partnership, Operation HOPE locates certified financial counselors in First Tennessee branches, where the counselors provide credit counseling, budgeting, and other financial empowerment training to individuals with the goal of raising the individuals' credit scores above 700. First Tennessee represented that it currently has one Hope Inside location and is committed to having at least 10 locations within the next two years. Through its first location in Memphis, First Tennessee stated that the Hope Inside program served 328 clients in the first quarter of 2015, of which 15 percent were referred for banking services.

<sup>10</sup> First Tennessee represented that it originated six SBA 504 loans totaling \$3.06 million from 2010 through 2012. First Tennessee represented that it has not originated any SBA 504 loans since 2012.

<sup>11</sup> To apply for preferred lender status, First Tennessee represented that it must book five SBA-guaranteed loans. To qualify as a preferred lender, these loans must be disbursed within a 24-month period.

status is achieved. In addition to SBA-guaranteed loans, First Tennessee also represented that it offers the following lending products to small businesses: term loans secured by non-real estate collateral, such as equipment, liquid assets, and vehicles; term loans secured by real estate; small business credit cards (VISA®); commercial lines of credit secured by various forms of collateral, such as accounts receivable, inventory, equipment, real estate, cash collateral, and marketable securities; and BizEssentials lines of credit, which are unsecured lines of credit in amounts up to \$100,000. First Tennessee represented that in 2010 through 2014, it reported, for CRA purposes, that it made 13,478 small business loans, amounting to \$2.8 billion. In addition, First Tennessee represented that between 2010 and 2014, more than 32 percent of the bank's loans to small businesses were in LMI areas.

In addition to offering small business products, First Tennessee represented that it has engaged in additional steps to support its small business customers. First Tennessee stated that, in 2014, it launched First Tennessee Business Banking School, an internal program that offers a curriculum based on analyzing and understanding small businesses to enable business and community bankers to improve their business acumen.<sup>12</sup> In addition, First Tennessee stated that it will recruit a targeted SBA business development officer/product specialist by the end of 2015 to market the SBA programs, and First Tennessee will begin direct marketing when the bank has obtained preferred lending status. Lastly, First Tennessee committed to originating 30 percent of its loans to small businesses in LMI geographies throughout all current AAs.

First Tennessee also represented that it has recently partnered with the Support Center, which provides capital and business support services throughout North Carolina. First Tennessee represented that as a member of the Support Center, it supports the business development and support services offered to Support Center clients and is engaged in volunteer support of the operation.

### **3. Products and Services**

With regard to First Tennessee's ability to serve the convenience and needs of its communities through its products and services, First Tennessee represented that, although it generally does not offer products or services targeted to LMI individuals, it does offer products with features that may benefit such individuals. First Tennessee represented that it offers reloadable prepaid debit cards for adults and teens with no overdraft fees to help those with no prior banking experience or those seeking a budgeting tool to access what they need without the additional risk of overdraft fees. First Tennessee represented it also has a product called Access Checking, an account that carries a low monthly fee and provides consumers with access to a number of free financial services and tools such as free online banking with bill payment, free mobile deposit, free mobile banking, a free automated teller machine (ATM) or personal identification number (PIN) debit card, free use of First Tennessee's network of approximately 200 ATMs, and no overdraft fees on ATM or PIN debit card transactions. First Tennessee stated that it designed the Access Checking product in cooperation with the City of Memphis and the Shelby County

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<sup>12</sup> First Tennessee represented that the program covers topics such as financial statement analysis, treasury products and cash flow training, and negotiations training.

Trustee's Office to meet the specific needs of LMI households entering the Bank On Memphis program.<sup>13</sup> First Tennessee represented that Access Checking allows high-risk households, described as those that are "unbanked" and have derogatory information in their past banking history, to open an account at First Tennessee with more limited features that significantly reduce the ability to overdraw the account. First Tennessee further represented that Access Checking is not advertised on the bank's Web site because of the targeted nature of the product.

Based on the information provided by First Tennessee, TrustAtlantic offers certain products that may benefit LMI individuals that will be discontinued following consummation of the proposed transaction. First Tennessee stated that, unlike TrustAtlantic, it does not offer automated teller machine (ATM) cards on savings-only relationships and, therefore, upon consummation of the proposed transaction, customers with only a savings account will no longer have the ability to access those accounts through an ATM. In addition, First Tennessee represented that TrustAtlantic offers a checking account with a \$100 minimum opening deposit and a low monthly service charge, and to encourage savings, TrustAtlantic offers an interest bearing, no-fee savings account for consumers under the age of 18. Although First Tennessee represented that it does not plan to continue to offer these particular products following consummation of the proposed transaction, First Tennessee represented that it will convert TrustAtlantic's clients to its existing product set, which also has features that may benefit LMI individuals. Specifically, First Tennessee stated that, after reviewing TrustAtlantic's checking features, fees, and offerings, TrustAtlantic's current checking account holders will be converted to either the First Tennessee Premier Checking Account<sup>14</sup> or the First Tennessee Express Checking Account,<sup>15</sup> both of which have \$50 minimum opening deposits and avoidable monthly service charges of \$9 and \$5 respectively. Further, First Tennessee stated that it will waive all service charges on checking and savings accounts for former TrustAtlantic customers for the first 12 months following consummation of the proposed transaction. In addition, First Tennessee represented that 85 percent of its existing checking account customers do not pay monthly fees because its accounts are designed with low minimum balances and fees, and most products offer ways to avoid fees. First Tennessee represented that it has a continual cycle of product and performance evaluation to ensure it is meeting the needs of its communities and broadening accessibility for all consumers. First Tennessee further represented that it designs products with the need for flexibility and accessibility of all consumers in mind.

First Tennessee also represented that the proposed transaction will benefit the community currently served by TrustAtlantic in several ways. In particular, First Tennessee stated that it offers products and services that are not offered currently by TrustAtlantic and provided specific

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<sup>13</sup> Bank On Memphis is a public-private partnership between the City of Memphis, Shelby County government, financial institutions, and nonprofits to encourage unbanked people to establish an account at a mainstream financial institution. Additional information on the Bank On program is available at: <http://www.bankonmemphis.org/>.

<sup>14</sup> Additional information on First Tennessee's Premier Checking Account is available at: <https://www.firsttennessee.com/Personal/Banking/Checking/Premier-Checking>.

<sup>15</sup> Additional information on First Tennessee's Express Checking Account is available at: <https://www.firsttennessee.com/Personal/Banking/Checking/Express-Checking>.

examples of products that would be available to TrustAtlantic customers following consummation of the proposed transaction. These products, which incorporate Positive Pay fraud protection, include disbursement products and purchase and payroll cards. In addition, First Tennessee identified TrustAtlantic products and services that either are not available at all TrustAtlantic branches or for which there are associated fees that First Tennessee does not charge. First Tennessee stated that these products and services include money orders, card replacements, deposit corrections, email/phone transfers, and account closures. Moreover, First Tennessee noted that it has certain products with lower opening balance requirements than TrustAtlantic. For example, as discussed above, First Tennessee represented that the minimum opening deposit for its consumer checking and savings accounts is \$50, compared to \$100 at TrustAtlantic. First Tennessee stated that TrustAtlantic customers would have access to a greater level of mobile and Internet banking capabilities and other alternative delivery systems following consummation of the proposed transaction.<sup>16</sup> First Tennessee further represented that it has no plans to close any locations acquired as a result of the proposed transaction.

In responding to questions regarding how First Tennessee plans to market its products and services to individuals in TrustAtlantic's current AAs, First Tennessee represented that it focuses its marketing activities on reinforcing the First Tennessee brand. Further, First Tennessee represented that its marketing activities do not focus on particular demographic segments or particular products. First Tennessee represented that its marketing activities are centered on a general radius around its financial centers. First Tennessee noted that mailings to prospective customers are generally made within a 10-mile radius around its financial centers, while, for mass media activity, the parameters are dictated by the media outlets' distribution/broadcast ranges. First Tennessee further represented that it will continue its strategy of concentrating its marketing activities in the general radius around its financial centers, including in Wake and Pitt Counties, where First Tennessee would have an expanded presence.

#### **4. Community Development Activities**

First Tennessee asserted that, since 1864, it has been committed to the customers and communities it serves. First Tennessee stated that it demonstrates its commitment by engaging

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<sup>16</sup> To assess the effectiveness of its alternative delivery systems, First Tennessee represented that it conducts primary customer research and rigorous analysis of customer data collected in First Tennessee's systems and recently upgraded its data warehouse to permit more robust analysis. First Tennessee represented that it conducts regular, in-depth analysis of delivery channel behavior and monitors the effectiveness in terms of usage of each alternative delivery channel on a monthly basis, both in transactions and customers. First Tennessee further represented that it has the ability to analyze usage patterns for different types of customers and it intends to incorporate income segment tracking in its effectiveness reporting going forward, and incorporate validation of the metrics into its compliance testing program. For purposes of this transaction, First Tennessee analyzed usage of its delivery channels for the 30-day period prior to July 17, 2015, for all households in its customer base generally, and for LMI households and households in LMI census tracts specifically. First Tennessee noted that the results of this analysis have not been through validation by First Tennessee's compliance testing. The results of First Tennessee's delivery channel usage analysis indicate that, during the analysis period, 17.0 percent of the bank's approximately 187,000 LMI households used First Tennessee's online banking and 9.7 percent of the bank's approximately 118,000 households in LMI census tracts used online banking. For purposes of comparison, First Tennessee represented that during the analysis period approximately 27.0 percent of the bank's approximately 390,000 total households used online banking.

in a number of outreach activities that target LMI and underserved individuals and communities, including majority-minority communities. First Tennessee represented that the following activities are illustrative of the types of activities it has and will continue to engage in after consummation of the proposed transaction. In 2014, First Tennessee provided financing to Hope Enterprise Corporation, which First Tennessee represented is a certified community development financial institution that provides affordable financing and related development services to fulfill its mission of strengthening communities, building assets, and improving lives in economically distressed parts of the mid-South. First Tennessee is a member of the Federal Home Loan Bank of Cincinnati, which First Tennessee represented oversees a grant program for non-profit agencies to develop affordable housing. First Tennessee represented that, through its participation in the Federal Home Loan Bank of Cincinnati, it has sponsored and helped secure grant funds for non-profit agencies to construct 885 units of affordable special needs housing since 1992. First Tennessee further represented that it established the First Tennessee Housing Corporation (FTHC) in 1997 to develop affordable multifamily housing. First Tennessee stated that FTHC receives capital investments from the bank, which allow FTHC to make investments in partnerships formed to acquire, develop, construct, own, and operate affordable housing developments that use tax credits. First Tennessee stated that, through its financing of the FTHC, it has supported the development of thousands of affordable multi-family housing units. In addition, First Tennessee represented that it is involved in several economic development initiatives that aim to strengthen its communities by providing solid support structures and healthy job markets.<sup>17</sup> First Tennessee further stated it intends to continue its current outreach and investment activities following consummation of the proposed transaction. Upon consummation of the proposed transaction, First Tennessee represented that it will leverage existing partnerships in and around the North Carolina communities presently served by TrustAtlantic.

First Tennessee noted that it has originated more than \$543 million in community development loans from 2010 through 2014. For example, First Tennessee represented that these funds have been used to provide safe and affordable housing for LMI individuals, to introduce critical services to a community that are otherwise not provided, and to redevelop communities through rehabilitation efforts that support and attract small business owners.<sup>18</sup> First Tennessee

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<sup>17</sup> Examples of initiatives First Tennessee represented it is involved in that support economic development include (i) a regional economic development initiative spanning the Knoxville/Oak Ridge Innovation Valley; (ii) the Small Business Resource Center in East Tennessee, which offers free information to people interesting in starting, operating, and owning a small business; (iii) the Mid-South Minority Business Council's Model Diversity Corporation Initiative, which promotes the purchase of goods and services from minority-owned businesses and establishes best practices in supplier diversity, workforce diversity, and community-giving diversity; and (iv) the Regional Alliance for Economic Development in Northeast Tennessee, which promotes economic development and new job creation by attracting domestic and international organizations to the area.

<sup>18</sup> Examples of First Tennessee's community development lending activities include (i) a \$1.975 million loan to a non-profit organization for the purpose of housing, job-skills training, and educational services for individuals in the immediate and surrounding communities with intellectual disabilities—the loan provided housing for 194 individuals within 48 multi-person housing units in a low-income community; (ii) a \$9 million line of credit to a non-profit organization to fund a grant program targeted to improving education and neighborhood revitalization throughout the Memphis Multistate MA; and (iii) a \$6.128 million loan to a real estate developer to finance two multi-family affordable housing projects with approximately 180 units.

represented that its partnerships with community organizations, government agencies, and non-profit organizations enable it to identify opportunities to meet growth and sustainability needs in its communities through its community development lending efforts.

First Tennessee also represented that its long-standing commitment to the communities in which it operates is demonstrated by its employees' volunteer activities. First Tennessee represented that its employees had self-reported 20,000 total volunteer hours in 280 activities in 2013, with 2,539 of those volunteer hours involving community development activities.<sup>19</sup> First Tennessee represented that in 2014, its employees volunteered 2,373 hours in community development activities.

The commenters cited specific concerns related to First Tennessee's investment test performance. In addition, First Tennessee's most recent CRA PE contained "Needs to Improve" investment test ratings for the States of North Carolina and Tennessee.<sup>20</sup> In responding to such concerns, First Tennessee represented that, at the time it received a "Needs to Improve" investment test rating in North Carolina, it was winding down its national expansion. First Tennessee also represented that since 2008, it has made investments in its North Carolina AAs consistent with the requirements of the CRA.<sup>21</sup> First Tennessee further represented that it would have an increased opportunity to engage in community involvement in North Carolina following consummation of the proposed transaction.<sup>22</sup> In the State of Tennessee, First Tennessee provided the total amount of investments the bank has made each year since the end of the prior CRA evaluation period. Based on the information provided by First Tennessee, it initially increased the total dollar amount of its investments, the increase peaked in 2012, and the total dollar amount has since declined from that peak.<sup>23</sup> First Tennessee represented that its total

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<sup>19</sup> First Tennessee represented that these activities were in the CRA regulations' community development categories of affordable housing, revitalization and stabilization, economic development, and community services targeted to LMI individuals.

<sup>20</sup> First Tennessee's CRA PE contained "Needs to Improve" investment test ratings for other AAs as well; however, because First Tennessee no longer has a presence in those states, they are not substantively addressed in this decision letter.

<sup>21</sup> First Tennessee represented that, during 2014, it made contributions to local community organizations that have a direct impact on meeting the lending needs of LMI persons residing in the local Raleigh and Winston-Salem communities, such as (i) the Downtown Housing Improvement Corporation, which specializes in providing quality affordable housing in the Triangle area; (ii) Habitat for Humanity of Wake County, which built 42 new homes for LMI families in 2014; and (iii) The Support Center (described above).

<sup>22</sup> First Tennessee represented that it intends to continue to support the following community development-related organizations that TrustAtlantic has supported: (i) The Daniel Center, which provides youth-focused financial literacy training; (ii) United Way; (iii) Greater Raleigh Chamber, for the development and sustainment of the Greater Raleigh economy to enhance the community; (iv) Cary Chamber of Commerce, which provides support and resources to business owners in the Cary community to enable expansion and sustainability; and (v) Pitt County Educational Foundation, for the security of the social and economic health of Pitt County through excellence in public schools.

<sup>23</sup> First Tennessee represented that it made qualified investments in the amount of approximately \$644,000 in 2010; \$21.9 million in 2011; \$27.8 million in 2012; \$18.9 million in 2013; and \$17.6 million in 2014.

qualified investments declined from the 2012 peak as a result of the reduction of available low-income housing tax credits in 2013 and 2014 due to the condition of the housing market.<sup>24</sup> In addition, First Tennessee stated that it has established an internal target of \$84.4 million in total qualified investments for 2014 through 2016.<sup>25</sup> First Tennessee further represented that it has partnered with community development organizations, government agencies, and non-profit organizations to proactively identify opportunities in all its AAs.<sup>26</sup>

First Tennessee highlighted its private foundation, the First Tennessee Foundation (Foundation), established in 1993, as a vehicle for serving its community. First Tennessee represented that the Foundation supports non-profit organizations in the communities served by the bank. First Tennessee represented that since inception, the Foundation has donated more than \$55 million. First Tennessee further represented that during 2014 the bank's Foundation awarded \$5,000 to a different non-profit each day for 150 days as part of the bank's "150 Days of Giving" campaign during First Tennessee's 150th anniversary celebration. In addition, First Tennessee represented that the Foundation engages in approximately \$5.0 million in annual giving, and the Foundation made grants totaling more than \$223,000 to local organizations that support affordable housing, healthcare, and financial literacy in the Mid-Atlantic Region in 2014.

## **B. Fair Lending**

The commenters expressed concerns regarding First Tennessee's level of applications received from, and lending to, African American borrowers and Hispanic borrowers across the bank and within specific AAs. One of the commenters expressed the concern that First Tennessee had not adequately met its responsibilities to collect racial data required by the HMDA on potential borrowers in particular AAs.

Pursuant to 12 CFR 25.28(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 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 Tennessee's January 11, 2010 CRA PE noted that the OCC found no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs.

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<sup>24</sup> First Tennessee noted that tax credits for several projects that had been claimed for a 10-year period ended in 2012.

<sup>25</sup> To achieve its internal target, First Tennessee's annual qualified investments totals for 2015 and 2016 would need to exceed the bank's peak annual qualified investments total from 2012.

<sup>26</sup> Examples of these partnerships include: (i) Community Investment Corporation of the Carolinas—an organization that extends affordable housing development programs into other markets First Tennessee serves, including areas presently served by TrustAtlantic; (ii) Development Housing Improvement Corporation—a non-profit housing development organization in the North Carolina region; and (iii) Community LIFT—a Memphis area non-profit that provides services in neighborhoods stunted by generational poverty.

Regarding the lending concerns raised by the commenter, 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.

Since First Tennessee's 2010 CRA PE, the OCC has conducted a number of supervisory activities to assess fair lending risk. These activities included reviewing First Tennessee's fair lending risk management program, as well as reviewing First Tennessee's publicly available 2013 HMDA data during its consideration of this application. In considering the proposed transaction, the OCC reviewed First Tennessee and TrustAtlantic's 2013 HMDA data in the geographic regions referenced by the commenter. The OCC's review of First Tennessee's 2013 HMDA data revealed lending data similar to that cited by the commenter in some areas; however, the low HMDA lending volume in some areas and categories limited the extent to which reliable statistical analysis could be performed.<sup>27</sup> Although First Tennessee had lower application volumes than other lenders in some instances, after accounting for other information available to the OCC as part of its regulatory responsibilities, the OCC's reviews have not resulted in findings of discrimination related to First Tennessee's home mortgage lending.

In responding to the commenters' fair lending-related concerns, First Tennessee represented that it maintains a program to ensure compliance with fair lending laws (Fair Lending Compliance Program). First Tennessee represented that its Fair Lending Compliance Program consists of policies, procedures, annual risk assessments, ongoing monitoring, management reporting, oversight, and training. First Tennessee described these components of its Fair Lending Compliance Program in additional detail.

First Tennessee represented that its annual fair lending risk assessment consists of two components: (i) risk management practices and (ii) risk factors. First Tennessee represented that under the first component, risk management practices, it assesses the effectiveness of its risk monitoring procedures and its fair lending training program; the adequacy of its policies, procedures, and guidelines; the level of board and senior management oversight throughout the organization; and the effectiveness of reviews and audits. First Tennessee represented that under the second component, risk factors, it assesses the level of risk and the measures in place to mitigate risks in the areas of organizational structure, the underwriting process, the pricing process, marketing practices, compensation and incentive programs, loan servicing, quality of assistance, products and services, and portfolio management. First Tennessee further represented that each of these risk factors is assessed based on the quantity of risk, quality of risk management, residual risk, and direction of risk, and the results are included in the bank's Fair Lending Risk Assessment Report.

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<sup>27</sup> As discussed above, the variety of home mortgage lending products offered directly by First Tennessee has decreased since the most recent CRA PE.

In addition to the annual fair lending risk assessment, First Tennessee represented that its Fair Lending Compliance Program includes an annual self-assessment that evaluates 16 areas to assess the effectiveness of the bank's monitoring processes for fair lending compliance.<sup>28</sup> First Tennessee also represented that it has appointed a Fair Lending Compliance Officer who conducts ongoing fair lending monitoring activities, such as a quarterly review of the bank's HMDA data for accuracy, monthly monitoring of complaints alleging discrimination and unfair treatment, annual testing of loan applications and originations/denials,<sup>29</sup> a review of all consumer loans that are originated with exceptions to the bank's standard pricing<sup>30</sup> and underwriting requirements, and annual redlining reviews. First Tennessee represented that its compliance testing unit also conducts various monitoring reviews for compliance with the prohibition on unfair, deceptive, or abusive acts or practices (UDAAP),<sup>31</sup> HMDA compliance, and compliance with the Equal Credit Opportunity Act,<sup>32</sup> and reviews the bank's marketing materials to ensure all advertising is clear and adequately informs customers of the terms and conditions of the products and services offered by the bank. Furthermore, First Tennessee represented that the Fair Lending Compliance Officer and other personnel and management at the bank are responsible for reviewing the results of the aforementioned assessments and monitoring.

Should any of the assessments or monitoring described above reveal fair lending issues, First Tennessee represented that it maintains a Corrective Action Plan for responding to deficiencies. First Tennessee represented that the steps in its Corrective Action Plan include (i) identifying policies and practices that are likely to cause error, (ii) assessing the extent and scope of a violation, (iii) discussing findings with management and obtaining a commitment for corrective action, (iv) taking action within an appropriate time frame, (v) reporting deficiencies consistently to management via the Compliance Risk Working Group, (vi) conducting follow-up monitoring and review, and (vii) documenting the corrective action.

With respect to consumer compliance laws, First Tennessee represented that it has established a training program for its employees. With regard to fair lending laws in particular, First Tennessee represented that it conducts annual fair lending training for all employees with lending authority, associated responsibilities, and/or oversight. In addition, First Tennessee

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<sup>28</sup> First Tennessee represented that the 16 areas evaluated by the self-assessment include: HMDA and HMDA-plus data (the HMDA data augmented with customer and loan information that is commonly used in mortgage underwriting and pricing decisions), complaints, real estate pricing, real estate underwriting, pricing exceptions, underwriting exceptions, home equity lines of credit, commercial and small business lending, non-real estate lending, credit cards, redlining, steering, credit scoring, disparate impact, loan servicing, and overdrafts.

<sup>29</sup> First Tennessee represented that protected classes with a statistically higher percentage of denied applicants or with significantly higher denial ratios are reviewed for evidence of disparate treatment trends and/or patterns.

<sup>30</sup> First Tennessee represented that exceptions that are not properly documented with acceptable mitigating factors as described in the bank's guidelines are considered violations of procedure and disciplinary action is taken when violations occur.

<sup>31</sup> 12 USC 5531.

<sup>32</sup> 12 USC 1691 *et seq.*

represented that employees who are not in one of these groups receive annual equal treatment training, which includes fair lending topics. First Tennessee represented that the purpose of its fair lending training is to ensure that the bank's staff is familiar with the tenets of fair lending laws, regulations, and policies. First Tennessee represented that the training is administered through the bank's online training portal, which can be accessed at any time. In addition to online training, First Tennessee represented that the Community Development and CRA Officer assists business lines with specific training as needed and prepares annual Fair Lending and Equal Treatment (UDAAP) Training for the bank's board of directors. First Tennessee represented also that TrustAtlantic employees would receive training as new employees of First Tennessee upon consummation of the proposed transaction.

In addressing one of the commenter's specific concerns related to whether First Tennessee had adequately met its responsibility to collect racial data on potential borrowers, First Tennessee represented that the level of applications submitted to the bank without information on ethnicity, race, and sex reflects First Tennessee's method of receiving applications through its centralized lending unit. Specifically, First Tennessee represented that, based on its current lending strategy, all home loan applications are facilitated by telephone via a centralized lending unit. First Tennessee further represented that even customers who request a home loan at a branch office or over the Internet are referred to the centralized lending unit.<sup>33</sup> Moreover, First Tennessee noted that, although Regulation B and Regulation C<sup>34</sup> provide that a bank must ask each applicant for such information, it cannot require an applicant to provide it. Nonetheless, to comply with this requirement, First Tennessee represented that when a customer calls the centralized lending unit a script is populated in the bank's loan application system that bank personnel use to explain the data collection process in compliance with the regulatory requirements. First Tennessee represented that a number of applicants elect not to provide this information and the bank cannot require them to do so. Further, Regulation C specifies that if an applicant declines to provide the requested information on an application taken by telephone the data need not be provided.<sup>35</sup>

First Tennessee addressed the commenters' concerns regarding its lending to minority individuals, as reflected in its HMDA data, by providing information related to its lending practices. As described above, First Tennessee represented that it sold its home loan lending division in 2008. First Tennessee further represented that, at the time of the sale of its home loan lending division, it entered into an agreement with PHH, which permitted First Tennessee to originate government-guaranteed home purchase mortgage loans in its local communities and sell them to PHH. Loans originated through this agreement with PHH were included in First Tennessee's HMDA-LAR. First Tennessee further represented that, since the PHH agreement expired in 2012, First Tennessee has had a referral relationship with Quicken Loans whereby it refers applicants for government-guaranteed and conventional home purchase mortgage loans that require escrow capabilities, which First Tennessee does not originate, to Quicken Loans for

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<sup>33</sup> First Tennessee represented that an exception to the centralized telephone system is that customers may provide a home loan application by mail.

<sup>34</sup> See 12 CFR 1002.13 and 12 CFR 1003.4(b).

<sup>35</sup> See 12 CFR 1003 app. B (II)(E).

consideration. Loans originated through these agreements with Quicken Loans are not included in First Tennessee's HMDA-LAR. As discussed above, First Tennessee is involved in negotiations with Quicken Loans and other providers to develop a process for originating such loans in First Tennessee's name and recording the loans on the bank's HMDA-LAR. First Tennessee represented that other lending activity initiated directly by the bank has remained constant and has focused on home improvement and home refinance loans.

First Tennessee described its outreach to LMI and underserved individuals and communities (including majority-minority communities) in terms of its community service and community development initiatives, including the First Tennessee Foundation. First Tennessee further represented that its marketing activities have never centered on a particular demographic and have served, in large part, to reinforce the First Tennessee brand as opposed to a particular product.

## **V. 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 the banks' performance in helping to meet the credit needs of their communities. As mentioned above, the convenience and needs standard is distinguished from the CRA requirements in that the convenience and needs analysis is prospective.

First Tennessee's CRA PE identified areas of strength for the bank, such as its community development lending and service test performance. However, the CRA PE and the public comments on the proposed transaction also identified areas of concern, particularly with regard to First Tennessee's provision of products and services to LMI individuals and geographies and minority individuals in its AAs, and its investment test performance. Moreover, the commenters identified specific concerns regarding how First Tennessee will serve the convenience and needs of the North Carolina market into which it would be expanding. In responding to these concerns, First Tennessee represented that it has increased its internal target for qualified investments for 2014 through 2016. First Tennessee further represented that it is evaluating the possibility of engaging in partnerships with a number of community organizations, including at least one in North Carolina.<sup>36</sup> In addition, as described above, First Tennessee represented that it plans to continue to support several organizations that TrustAtlantic has historically supported and that

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<sup>36</sup> First Tennessee represented that it is evaluating the possibility of engaging in partnerships with the following organizations: Community Reinvestment Fund, which provides capital to create jobs for disadvantaged people and help economically distressed communities; Eastern 8 Community Development Corporation, which creates affordable housing for LMI families in eight northeast Tennessee counties; Tennessee Affordable Housing Coalition, which has an objective to improve the availability and quality of affordable housing in Tennessee; North Carolina Housing Coalition, which focuses on providing safe and affordable housing throughout North Carolina communities; the Housing Fund, which finances affordable housing and neighborhood revitalization projects throughout middle Tennessee; and R U Tomorrow, a weekly television series that features youth throughout the Southeast region and focuses on social and economic topics.

First Tennessee has made contributions to local community organizations that have a direct impact on meeting the lending needs of LMI persons residing in the local Raleigh and Winston-Salem, North Carolina communities. With regard to lending, First Tennessee represented that it has established target lending goals for home mortgage loans to LMI individuals and for home mortgage loans and small business loans in LMI geographies, along with plans for achieving these goals. First Tennessee also represented that it is in negotiations to develop partnerships with third-party mortgage lenders to meet lending targets to LMI borrowers and geographies (with a heightened focus on the Chattanooga, Memphis, Raleigh, and Wake County AAs). Finally, First Tennessee represented that, after the merger, it will have the opportunity to increase its community involvement in the North Carolina markets where it is currently located and to commence community development activities in the Greenville market, where it currently has no offices. Nonetheless, the record indicates that many of First Tennessee's efforts are still in development or the early stages of implementation.

The record indicates that while First Tennessee currently has a minimal presence in North Carolina, it has not adequately demonstrated that it will be effective in achieving its LMI mortgage and other lending goals. In addition, First Tennessee has not developed or implemented an investment strategy that demonstrates the bank's responsiveness to the credit and community development needs of the communities it serves. Rather, First Tennessee noted that it is proactively developing partnerships with community development organizations, government agencies, and non-profit organizations to identify investment opportunities. Consequently, continuing concern exists regarding how the resulting institution would improve its investment test performance and help serve the needs of its communities, in particular the mortgage and other credit needs of LMI individuals and geographies and minority individuals and geographies. Accordingly, based upon our review of the application, the public comments, and First Tennessee's response to those comments, the bank's responses to the OCC's additional information requests and the FRB's additional information requests, and supervisory materials and other information available to the OCC as part of its regulatory responsibilities, the application is approved, subject to the following condition.

First Tennessee shall submit a CRA Plan<sup>37</sup> to the OCC for review and written determination of no supervisory objection within 90 days of this decision. First Tennessee's CRA Plan must comply with the following:

- (1) The CRA Plan must contain a complete 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 AAs, in particular the needs of the Raleigh Metropolitan Statistical Area (MSA), the Memphis Multistate MA, the Chattanooga Multistate MA, the Nashville MSA, and the Knoxville MSA, including, but not limited to
  - home mortgage lending in LMI geographies and to LMI individuals.

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<sup>37</sup> Although First Tennessee has the option of submitting for OCC approval a CRA Strategic Plan, as described in 12 CFR 25.27, the OCC is not requiring the bank to develop such a plan. First Tennessee will continue to be evaluated under the lending, investment, and service tests applicable to large institutions.

- small business lending to businesses with revenues of \$1 million or less, including in LMI geographies.
  - community development investments, as well as community development lending and services.
- (2) The CRA Plan must include the creation and implementation of a product development committee that will focus on developing and implementing products that will help meet the convenience and needs of the communities it serves, including LMI communities.
  - (3) The CRA Plan must describe how First Tennessee plans to offer and market its home mortgage products to individuals and geographies in its AAs, including LMI individuals and geographies, in a nondiscriminatory manner.
  - (4) The CRA Plan must describe a process for assessing and demonstrating the extent to which the institution's alternative systems for delivering retail banking services, in particular mobile and online banking, are available to provide, and effective in providing, needed retail banking services in LMI geographies and to LMI individuals within each of the bank's AAs.
  - (5) In developing the CRA Plan, First Tennessee shall informally seek input from members of the public in its AAs impacted by the CRA Plan.
  - (6) The CRA Plan must contain measurable annual goals and timetables for the achievement of those goals, for helping to meet the credit needs of First Tennessee's AAs, including the credit needs of LMI individuals and geographies within the AAs.
  - (7) 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 Tennessee'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 Tennessee 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.
  - (8) The CRA Plan shall be effective upon written determination of no supervisory objection by the OCC, and First Tennessee shall make the CRA Plan available to the public, such as by posting the CRA Plan on its public Web site.
  - (9) First Tennessee 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 30 days prior to the commencement of the CRA PE.

The OCC will factor First Tennessee's measurable progress implementing the strategies and meeting the goals set forth in the CRA Plan into evaluations of First Tennessee's CRA performance commencing on or after issuance of this decision.

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.

## **VI. Consummation Requirements**

OCC Southern District Licensing Office staff must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice’s injunction period and any other required regulatory approval. Southern District staff will issue a letter certifying consummation of the transaction when it receives

- a Secretary’s Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.
- documentation that all other conditions that the OCC imposed have been met.

If the merger is not consummated within twelve months from this decision, the conditional approval shall automatically terminate, unless the OCC grants an extension. Consummation must follow receipt of all other required regulatory approvals.

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.

You should include the OCC control number on any correspondence related to this filing. A separate letter is enclosed requesting your feedback on how we handled the referenced application. We would appreciate your response so we may improve our service. If you have any questions, please contact Senior Licensing Analyst Joseph Burbridge at (214) 720-7052 or via e-mail at [joseph.burbridge@occ.treas.gov](mailto:joseph.burbridge@occ.treas.gov).

Sincerely,

*Beverly Evans*  
*for*

Stephen A. Lybarger  
Deputy Comptroller for District Licensing