

First American Financial Corp
Form 8-K
September 02, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported) August 30, 2011

FIRST AMERICAN FINANCIAL CORPORATION

(Exact Name of the Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-34580
(Commission
File Number)

26-1911571
(IRS Employer
Identification No.)

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1 First American Way, Santa Ana, California

(Address of Principal Executive Offices)

Registrant's telephone number, including area code (714) 250-3000

92707-5913

(Zip Code)

Not Applicable.

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensation Arrangements of Certain Officers.

On August 30, 2011, the Compensation Committee of First American Financial Corporation (the Company) authorized the Company to enter into a revised employment agreement with Dennis J. Gilmore, Max O. Valdes, and Kenneth D. DeGiorgio. The revised agreement extends the employment term to December 31, 2014. Under the agreements, Mr. Gilmore will continue to serve as the Company's chief executive officer; Mr. Valdes will continue to serve as the Company's chief financial officer and executive vice president; and Mr. DeGiorgio will continue to serve as an executive vice president of the Company. The agreements specify minimum base salaries equal to the current base salaries paid to such individuals, namely \$750,000, \$450,000 and \$550,000 for Messrs. Gilmore, Valdes and DeGiorgio, respectively. Determinations regarding bonus amounts, long term incentive awards and any increases in base salary are at the discretion of the Company's Compensation Committee or Board of Directors.

The agreements continue to provide that if the Company terminates the executive's employment without cause, the executive is entitled to an amount representing twice the sum of the executive's base salary and the second largest of the prior three years' bonuses. Half of this sum would be paid over the first year following termination in twelve equal monthly installments, and the other half would be paid at the end of this one-year period. The executive's receipt of these amounts would be contingent on the Company's receipt of a release from the executive as well as the executive's compliance with certain non-compete, non-solicitation and confidentiality provisions contained within the agreement. In addition, if the executive's employment is terminated without cause and the executive would otherwise, during the term of the agreement, have reached his early retirement date under the Company's Executive Supplemental Retirement Plan, then the executive's benefit under the plan will be deemed vested on his early retirement date notwithstanding the termination, provided that the executive's final average compensation used to determine the amount of the benefit would be determined as of his actual termination date.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

FIRST AMERICAN FINANCIAL CORPORATION

Date: September 2, 2011

By: /s/ KENNETH D. DeGIORGIO

Name: Kenneth D. DeGiorgio

Title: Executive Vice President

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First Federal of Hazard
Main Office:

1960

Owned

\$172

15,000

479 Main Street
Hazard, Kentucky 41701

First Federal of Frankfort
Main Office:
216 West Main Street
Frankfort, Kentucky 40601

2005

Owned

1,273

14,000

East Branch
1980 Versailles Road
Frankfort, Kentucky 40601

2005

Owned

516

1,800

West Branch
1220 US 127 South
Frankfort, Kentucky 40601

2005

Owned

509

2,480

The net book value of our investment in premises and equipment was \$2.7 million at June 30, 2010. See Note E of Notes to Consolidated Financial Statements.

Item 3. Legal Proceedings

From time to time, we may be defendants in claims and lawsuits against us, such as claims to enforce liens, condemnation proceedings on properties in which we hold security interests, claims involving the making and servicing of real property loans and other issues incident to our business. We are not a party to any pending legal proceedings that we believe could have a material adverse effect on our financial condition, results of operations or cash flows.

Item 4. [Removed and reserved]

Not applicable.

PART II

Item 5. Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

(a) The information contained under the sections captioned “Market Information” in the Company’s Annual Report to Stockholders for the Fiscal Year Ended June 30, 2010 (the “Annual Report”) filed as Exhibit 13 hereto is incorporated herein by reference.

(b) Not applicable.

(c) The Company repurchased the following equity securities registered under the Securities Exchange Act of 1934, as amended, during the fourth quarter of the fiscal year ended June 30, 2010.

| Period | (a) Total Number of Shares Purchased | (b) Average Price Paid per Share | (c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | (d) Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs (1) |
|--|--|---|---|--|
| April 2010 Beginning date: April 1 Ending date: April 30 | — | \$ — | — | 20,900 |
| May 2010 Beginning date: May 1 Ending date: May 31 | 10,000 | \$ 9.86 | 10,000 | 10,900 |
| June 2010 Beginning date: June 1 Ending date: June 30 | 32,500 | \$ 9.56 | 32,500 | 117,500 |
| Total | 42,500 | \$ 9.63 | 42,500 | |

(1) On May 14, 2010, the Company announced a program (its seventh) to repurchase up to 150,000 shares of its Common Stock. It is estimated that this program will be completed within one year.

Item 6. Selected Financial Data

This item is not applicable, as the Company is a smaller reporting company.

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

The information contained in the section captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in the Annual Report is incorporated herein by reference.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

This item is not applicable, as the Company is a smaller reporting company.

Item 8. Financial Statements and Supplementary Data

The Consolidated Financial Statements, Notes to Consolidated Financial Statements, Report of Independent Registered Public Accounting Firm and Selected Financial Data, which are listed under Item 15 herein, are included in the Annual Report and are incorporated herein by reference.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Management is responsible for establishing and maintaining effective disclosure controls and procedures as defined under Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934. As of June 30, 2010, an evaluation was performed under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on that evaluation, management concluded that disclosure controls and procedures as of June 30, 2010, were not effective in ensuring material information required to be disclosed in this Annual Report on Form 10-K was recorded, processed, summarized, and reported on a timely basis.

Management's responsibilities related to establishing and maintaining effective disclosure controls and procedures including maintaining effective internal controls over financial reporting that are designed to produce reliable financial statements in accordance with accounting principles generally accepted in the United States. As disclosed in the Report on Management's Assessment of Internal Control Over Financial Reporting of this Annual Report, we assessed our system of internal control over financial reporting as of June 30, 2010, in relation to criteria for effective internal control over financial reporting as described in "Internal Control-Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, we believe that, as of June 30, 2010, our system of internal control over financial reporting was not operating effectively as it relates to certain internal controls related to the income tax function.

We have a matter that has been classified as a material weakness in internal control over financial reporting as of June 30, 2010.

The Public Accounting Oversight Board's Auditing Standard No. 5 has defined a material weakness as "a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

During the conduct of our annual audit, Crowe Horwath LLP ("Crowe"), our registered independent public accounting firm, identified a matter as they conducted audit work. This matter related to the accuracy of our deferred income tax assets and liabilities. Based on the evaluation by our Chief Executive Officer and our Chief Financial Officer, they concluded that our disclosure controls and procedures related to income tax were not effective as of June 30, 2010. Specifically, at issue was the carrying amount of the deferred tax liability and the distribution of dividends from one of the Company's thrift subsidiaries to its parent in excess of accumulated earnings and profits, which resulted in distribution of thrift reserves, which is a taxable event. The issues were identified after discussions with Crowe and resulted in the restatement of retained earnings at July 1, 2007, and the restatement of net income for the fiscal year ended June 30, 2009. Retained earnings was increased by \$224,000 at July 1, 2007, while net income for the fiscal year ended June 30, 2009, was reduced by \$80,000, the additional tax resulting from the excess distribution of thrift reserves.

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to the exemption provided to issuers that are not "large accelerated filers" or "accelerated filers" under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

To remediate the material weakness described above and enhance our internal controls over financial reporting, management has initiated the following significant changes:

- Revised our procedures related to income tax preparation and financial reporting to include updating a schedule of accumulated earnings and profits.

Notwithstanding the evaluation and initiation of these remediation actions, the identified significant material weakness in our internal controls over financial reporting will not be considered remediated until the new controls are fully implemented, in operation for a sufficient period of time, tested, and concluded by management to be operating effectively.

Item 9B. Other Information

Not Applicable.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance

Directors

The information contained under the section captioned “Proposal I — Election of Directors” in the Company’s definitive proxy statement for the Company’s 2010 Annual Meeting of Stockholders (the “Proxy Statement”) is incorporated herein by reference.

Executive Officers

The information regarding the Company’s executive officers is incorporated herein by reference to “Proposal I – Election of Directors” in the Proxy Statement.

Corporate Governance

Information regarding the Company’s Audit Committee and Audit Committee financial expert is incorporated herein by reference to the section captioned “Proposal I Election of Directors Committees of the Board of Directors” in the Proxy Statement.

Compliance with Section 16(a) of the Exchange Act

Information regarding compliance with Section 16(a) of the Exchange Act is incorporated by reference to section captioned “Section 16(a) Beneficial Ownership Reporting Compliance” in the Proxy Statement.

Disclosure of Code of Ethics

Kentucky First has adopted a Code of Ethics and Business Conduct that applies to all of its directors, officers and employees. To obtain a copy of this document at no charge, please write to Kentucky First Federal Bancorp, P.O. Box 535, Frankfort, Kentucky 40602-0535, or call toll-free (888) 818-3372 and ask for Investor Relations.

Item 11. Executive Compensation

The information contained under the section captioned “Executive Compensation” in the Proxy Statement is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

(a) Security Ownership of Certain Beneficial Owners. Information required by this item is incorporated herein by reference to the section captioned “Voting Securities and Security Ownership” in the Proxy Statement.

(b) Security Ownership of Management. Information required by this item is incorporated herein by reference to the sections captioned “Voting Securities and Security Ownership” in the Proxy Statement.

(c) Changes in Control. Management of the Company knows of no arrangements, including any pledge by any person of securities of the Company, the operation of which may at a subsequent date result in a change in control of the Company.

(d) Equity Compensation Plans. The following table sets forth certain information with respect to the Company's equity compensation plans as of June 30, 2010.

| | (a) | (b) | (c) |
|--|---|---|---|
| | Number of securities to be issued upon exercise of outstanding options, warrants and rights | Weighted-average exercise price of outstanding options, warrants and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) |
| Equity compensation plans approved by security holders | 325,800 | \$ 10.10 | 95,416 |
| Equity compensation plans not approved by security holders | — | — | — |
| Total | 325,800 | \$ 10.10 | 95,416 |

Item 13. Certain Relationships and Related Transactions, and Director Independence

Certain Relationships and Related Transactions

The information required by this item is incorporated herein by reference to the section captioned "Transactions with Related Persons" in the Proxy Statement.

Corporate Governance

For information regarding director independence, the section captioned "Proposal I – Election of Directors" is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

The information required by this item is incorporated herein by reference to the section captioned "Audit and Other Fees Paid to Independent Accountant" in the Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) List of Documents Filed as Part of This Report

(1) Financial Statements. The following consolidated financial statements are incorporated by reference from Item 8 hereof (see Exhibit 13):

Report of Independent Registered Public Accounting Firm
 Consolidated Balance Sheets as of June 30, 2010 and 2009
 Consolidated Statements of Income for the Years Ended June 30, 2010 and 2009
 Consolidated Statements of Comprehensive Income for the Years Ended
 June 30, 2010 and 2009
 Consolidated Statements of Shareholders' Equity for the Years Ended
 June 30, 2010 and 2009
 Consolidated Statements of Cash Flows for the Years Ended June 30, 2010 and 2009
 Notes to Consolidated Financial Statements

(2) Financial Statement Schedules. All schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are omitted because of the absence of conditions under which they are required or because the required information is included in the consolidated financial statements and related notes thereto.

(3) Exhibits. The following is a list of exhibits filed as part of this Annual Report on Form 10-K and is also the Exhibit Index.

| No. | Description |
|--------|--|
| 3.11 | Charter of Kentucky First Federal Bancorp |
| 3.21 | Bylaws of Kentucky First Federal Bancorp |
| 4.11 | Specimen Stock Certificate of Kentucky First Federal Bancorp |
| 10.12 | Employment Agreement between Kentucky First Federal Bancorp and Tony D. Whitaker, as amended† |
| 10.22 | Employment Agreement between First Federal Savings and Loan Association of Hazard and Tony D. Whitaker, as amended† |
| 10.32 | Employment Agreement between Kentucky First Federal Bancorp and Don D. Jennings, as amended† |
| 10.42 | Employment Agreement between First Federal Savings Bank of Frankfort and Don D. Jennings, as amended† |
| 10.52 | Employment Agreement between Kentucky First Federal Bancorp and R. Clay Hulette, as amended† |
| 10.62 | Employment Agreement between First Federal Savings Bank of Frankfort and R. Clay Hulette, as amended† |
| 10.72 | Employment Agreement between First Federal Savings Bank of Frankfort and Teresa Kuhl, as amended† |
| 10.82 | Amended and Restated First Federal Savings and Loan Association of Hazard Change in Control Severance Compensation Plan† |
| 10.92 | Amended and Restated First Federal Savings Bank of Frankfort Change in Control Severance Compensation Plan† |
| 10.102 | |

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Amended and Restated First Federal Savings and Loan Association Supplemental Executive Retirement Plan†

10.113 Kentucky First Federal Bancorp 2005 Equity Incentive Plan†

10.124 Form of Restricted Stock Award Agreement†

10.134 Form of Incentive Stock Option Award Agreement†

10.144 Form of Non-Statutory Option Award Agreement†

| | |
|------|--|
| 13 | Annual Report to Stockholders for the year ended June 30, 2010 |
| 21 | Subsidiaries |
| 23.1 | Consent of Crowe Horwath LLP |
| 23.2 | Consent of BKD LLP |
| 31.1 | Rule 13a-14(a) Certification of Chief Executive Officer |
| 31.2 | Rule 13a-14(a) Certification of Chief Financial Officer |
| 32 | Section 1350 Certifications |

† Management contract or compensation plan or arrangement.

- (1) Incorporated herein by reference to the Company's Registration Statement on Form S-1 (File No. 333-119041).
- (2) Incorporated herein by reference to the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2008 (File No. 0-51176).
- (3) Incorporated herein by reference to the Company's definitive additional proxy solicitation materials filed with the Securities and Exchange Commission on October 24, 2005.
- (4) Incorporated herein by reference to the Company's Registration Statement on Form S-8 (File No. 333-130243).
- (b) Exhibits. The exhibits required by Item 601 of Regulation S-K are either filed as part of this Annual Report on Form 10-K or incorporated by reference herein.
- (c) Financial Statements and Schedules Excluded from Annual Report. There are no other financial statements and financial statement schedules which were excluded from the Annual Report to Stockholders pursuant to Rule 14a-3(b) which are required to be included herein.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

KENTUCKY FIRST FEDERAL BANCORP

October 6, 2010

By: /s/ Tony D. Whitaker
Tony D. Whitaker
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ Tony D. Whitaker
Tony D. Whitaker
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer) October 6, 2010

/s/ R. Clay Hulette
R. Clay Hulette
Vice President, Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer) October 6, 2010

/s/ Don D. Jennings
Don D. Jennings
Director October 6, 2010

/s/ Stephen G. Barker
Stephen G. Barker
Director October 6, 2010

/s/ William D. Gorman
William D. Gorman
Director October 6, 2010

/s/ Walter G. Ecton, Jr.
Walter G. Ecton, Jr.
Director October 6, 2010

/s/ David R. Harrod
David R. Harrod
Director October 6, 2010

/s/ Herman D. Regan, Jr.
Herman D. Regan, Jr.
Director October 6, 2010

