

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of:

CARL A. SCHWEDE, Former
Director and
Institution-Affiliated
Party of:

First Federal Savings and
Loan Association, Las Vegas,
New Mexico

OTS ORDER No. DAL-94-03

DATED: March 17, 1994

ORDER OF PROHIBITION AND
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS") has conducted an investigation pursuant to OTS Resolution No. DAL-91-116, dated August 21, 1991, concerning First Federal Savings and Loan Association, Las Vegas, New Mexico ("FIRST FEDERAL") and, as a result of that investigation has concluded that:

(a) From and after January 20, 1987, Carl A. Schwede ("SCHWEDE"), a director of FIRST FEDERAL, knew that the OTS considered Michael L. Gregory, James P. Sappington, Jr., and their related business interests to be "one borrower" as defined by the loans-to-one borrower regulation (then set forth at 12 C.F.R. § 563.9-3(a)(1)). SCHWEDE did not object to the Institution's continued lending to these borrowers, and did not analyze the applicable regulation and its applicability to the Institution's continued lending to these borrowers; nor did SCHWEDE seek

independent legal advice in order: (i) to correct existing regulatory violations, and (ii) to prevent the Institution from making further loans in violation of applicable regulations;

(b) From and after January 20, 1987, SCHWEDE approved and/or ratified at least sixteen (16) loans to Michael L. Gregory, James P. Sappington, Jr. and their related business interests, resulting in a total principal amount outstanding to these borrowers on May 28, 1989 of \$3,489,237.81, an amount that exceeded the legal limit by \$1,388,248.81;

(c) FIRST FEDERAL has suffered or probably will suffer significant loss on the loans described above; and

WHEREAS, SCHWEDE has executed a STIPULATION AND CONSENT TO ISSUANCE OF AN ORDER OF PROHIBITION AND ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the OTS, acting by and through its Midwest Regional Director ("Regional Director"); and

WHEREAS, without admitting or denying the statements, conclusions, and opinions of the OTS contained herein, SCHWEDE has consented and agreed in the Stipulation to the issuance of this ORDER OF PROHIBITION AND ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF ("Orders"); and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders of prohibition and orders to cease and desist where the respondent has consented to the issuance of the orders;

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NOW THEREFORE, THE OTS ORDERS AS FOLLOWS:

ORDER OF PROHIBITION

1. SCHWEDE is prohibited from further participation, in any manner, in the conduct of the affairs of FIRST FEDERAL or any of its subsidiaries.

2. Without the prior written approval of the OTS or its successor and, if appropriate, another federal financial institution's regulatory agency, SCHWEDE may not hold any office in, or participate in any manner in the conduct of the affairs of any institution(s) or other entity as set forth in Section 8(e)(7)(A) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. § 1818(e)(7)(A) (West 1989 and Supp. IV 1992). Pursuant to Section 8(e)(6) of the FDIA, 12 U.S.C.A. § 1818(e)(6), conduct prohibited by this Order includes, inter alia, the solicitation, the transfer or the exercise of any voting rights with respect to any securities issued by any insured depository institution.

ORDER TO CEASE AND DESIST
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3. From and after the date of issuance of this Order, SCHWEDE shall be individually obligated to make restitution to the Resolution Trust Corporation ("RTC") or its successor, as receiver for FIRST FEDERAL, in the amount of \$65,500, without interest.

4. In satisfaction of the obligation specified above, SCHWEDE shall make payments to the OTS or its successor in accordance with the following schedule:

<u>Amount</u>	<u>Date Payment Due</u>
\$10,917	Date of Execution
\$10,917	March 31, 1994
\$10,917	June 30, 1994
\$10,917	September 30, 1994
\$10,916	December 31, 1994
\$10,916	March 31, 1995

The full remaining balance of the obligation specified in Paragraph 3 of this Order shall become immediately due and payable upon SCHWEDE'S failure to make any payment specified above within twenty (20) days after the date required by Paragraph 4 of this Order.

5. SCHWEDE'S obligation to make restitution pursuant to this Order is his sole and separate obligation and will not be reduced by payments made by or on behalf of SCHWEDE to an entity other than the OTS or its successor. Further, SCHWEDE'S obligation hereunder will not be reduced by or subject to an offset as a result of any payment to the OTS or its successor made by or on behalf of any other person or entity pursuant to such person's or entity's separate obligation(s) to the OTS or its successor.

6. All payments that are required by this Order shall be made by certified or cashier's check payable to the Resolution Trust Corporation as Receiver for FIRST FEDERAL, and delivered to:

Midwest Regional Director
Office of Thrift Supervision
122 West John Carpenter Freeway
P. O. Box 619027
Irving, Texas 75039

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RE: OTS ORDER NO. DAL-94-03

DATED: March 17, 1994

STIPULATION AND CONSENT TO ISSUANCE OF AN
ORDER OF PROHIBITION AND ORDER TO CEASE
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The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Regional Office ("Regional Director"), and Carl A. Schwede ("SCHWEDE"), former director and institution-affiliated party of First Federal Savings and Loan Association, Las Vegas, New Mexico ("FIRST FEDERAL" or the "INSTITUTION"), hereby stipulate and agree as follows:

1. Consideration. The OTS, based on information reported to it, is of the opinion that grounds exist to initiate administrative proceedings against SCHWEDE pursuant to Sections 8(b) and (e) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C.A. §§ 1818(b) and (e) (West 1989 and Supp. IV 1992). SCHWEDE desires to cooperate with

the OTS and to avoid the time and expense of such administrative litigation. Without admitting or denying the statements, conclusions and opinions of the OTS, except those contained in Paragraph 2 below which are admitted, SCHWEDE hereby stipulates and agrees to the terms of this STIPULATION AND CONSENT ("Stipulation") and to the issuance of the attached ORDER OF PROHIBITION AND ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF ("Orders"), in consideration of the agreement of the OTS to forbear from initiating any other civil or administrative proceeding against SCHWEDE arising out of SCHWEDE'S actions, known or discovered by the OTS relating to First Federal and its subsidiaries. This STIPULATION AND CONSENT TO ISSUANCE OF AN ORDER OF PROHIBITION AND ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF ("Consent") and the Orders do not constitute admissions by SCHWEDE that his actions, as described herein, meet the definitions contained in Section 523(a)(11) of the U.S. Bankruptcy Code, 11 U.S.C. § 523(a)(11); provided however, that nothing herein is intended to or shall preclude the OTS from making such claim in any subsequent bankruptcy proceeding in which SCHWEDE contends that his obligation to pay any restitution pursuant to the Consent and Orders is subject to discharge.

The OTS, based on available evidence and testimony, has determined that it is appropriate and in the best interest of the public to execute this Stipulation and the attached Orders.

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This Stipulation and the Orders do not compromise, settle, dismiss, resolve, or in any way affect any civil actions, charges against, or liability of SCHWEDE that may be or have been brought by any governmental entity other than the OTS.

2. Jurisdiction.

(a) FIRST FEDERAL was a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C.A. § 1813(b) (West 1989 & Supp. IV 1992), and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C.A. § 1462(4) (West Supp. IV 1992). Accordingly, it was an "Insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C.A. § 1813(c), as amended.

(b) Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB") was the regulatory agency with jurisdiction over FIRST FEDERAL and persons participating in the conduct of the affairs thereof, including SCHWEDE, pursuant to Section 5 of the HOLA, 12 U.S.C.A. § 1464.

(c) As of August 9, 1989, pursuant to Section 3(q) of the FDIA, as amended by Section 204 of FIRREA, 12 U.S.C.A. § 1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations.

(d) At all times relevant hereto, SCHWEDE was a director and person participating in the conduct of the affairs of FIRST FEDERAL and an institution-affiliated party of FIRST FEDERAL, as defined at 12 U.S.C.A. § 1813(u), having served in such

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capacities within the six (6) years prior to the date of this Stipulation.

(e) Pursuant to Section 3 of the FDIA, as amended, the OTS is the "appropriate Federal banking agency" to maintain prohibition and cease and desist for affirmative relief proceedings against institution-affiliated parties of FIRST FEDERAL.

Therefore, SCHWEDE is subject to the authority of the OTS to initiate and maintain such proceedings against him, pursuant to Sections 8(b) and (e) of the FDIA, 12 U.S.C.A. §§ 1818(b) and (e).

3. Consent. SCHWEDE consents to the issuance by the OTS of the Orders, a copy of which is attached hereto. SCHWEDE further agrees to comply with the terms of the Orders upon issuance and stipulates that the Orders comply with all the requirements of law.

4. Finality. The Orders are issued under Sections 8(b) and (e) of the FDIA, 12 U.S.C.A. §§ 1818(b) and (e). Upon issuance, they shall be final orders, effective and fully enforceable by the OTS or its successor under the provisions of Section 8(i) of the FDIA, 12 U.S.C.A. § 1818(i), and subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C.A. § 1818(j).

5. Waivers.

(a) SCHWEDE waives his right to the administrative hearing provided by Sections 8(b) and (e) of the FDIA, 12 U.S.C.A. §§ 1818(b) and (e), and further waives any right to seek judicial review of the Orders, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C.A. § 1818(h), or otherwise to challenge the validity of the Orders.

