

3/8/91

UNITED STATES OF AMERICA  
BEFORE THE  
OFFICE OF THRIFT SUPERVISION

\_\_\_\_\_  
In the Matter of: )  
 )  
AMERICAN FEDERAL BANK, )  
a Federal Savings Bank )  
Ada, Oklahoma )  
\_\_\_\_\_)

Re: Resolution No. DAL-91-12

STIPULATION AND CONSENT TO ISSUANCE OF  
ORDER TO CEASE AND DESIST

The Office of Thrift Supervision ("OTS"), by and through its Regional Director for the Midwest Region, OTS, and American Federal Bank, A Federal Savings Bank, Ada, Oklahoma, its subsidiaries, service corporations and affiliates ("American Federal" or the "Institution"), hereby agree as follows:

1. Consideration. The OTS, based upon information reported to it, is of the opinion that the grounds exist to initiate an administrative cease and desist proceeding against American Federal pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub.L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. §1818(b)). American Federal desires to cooperate with the OTS to avoid

the time and expense of such administrative litigation, and without admitting or denying that such grounds exist, hereby stipulates and agrees to the following terms in consideration of the forbearance by the OTS from initiating such administrative cease-and-desist litigation against American Federal with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) American Federal is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owner's Loan Act of 1933, as amended by FIRREA. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1813(c)).

(b) Pursuant to Section 3 of the FDIA, as amended by FIRREA, the Director of OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, American Federal is subject to the authority of the OTS to initiate and maintain a cease-and-desist proceeding against it pursuant to Section 8(b) of the FDIA, as amended by FIRREA (to be codified at 12 U.S.C. § 1818(b)).

3. Consent. American Federal consents to the issuance by the OTS of the Order. It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under Section 8(b) of the



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Ada, Oklahoma )  
\_\_\_\_\_)

Resolution No. DAL-91-12,

Dated: March 8, 1991.

ORDER TO CEASE AND DESIST

WHEREAS, American Federal Bank, a Federal Savings Bank, Ada, Oklahoma ("American Federal" or the "Institution"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist ("Stipulation") that is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Midwest Region ("Regional Director"); and is incorporated herein by reference; and

WHEREAS, American Federal, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to §8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") (to be codified at 12 U.S.C. § 1818(b));

NOW, THEREFORE, IT IS ORDERED that American Federal and its directors, officers, employees, agents, subsidiaries and service corporations shall cease and desist from any violation of, or the aiding and abetting of any violation of:

- a. Section 563.98 of the OTS Regulations, 12 C.F.R. § 563.98 (1990);
- b. Section 563.170 of the OTS Regulations, 12 C.F.R. § 563.170 (1990);
- c. Section 563.160 of the OTS Regulations, 12 C.F.R. § 563.160 (1990);
- d. Section 563.233 of the OTS Regulations, 12 C.F.R. § 563.233 (1990);
- e. Section 566.2 of the OTS Regulations, 12 C.F.R. § 566.2 (1990); and,
- f. Section 29 of the Federal Deposit Insurance Act ("FDIA"), as added by FIRREA, to be codified at 12 U.S.C. § 1831f.

IT IS HEREBY FURTHER ORDERED that:

1. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations or as such definition is amended after the execution of this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, shall have meanings that accord with their best custom and usage in the savings and loan industry. However, for

the purposes of this Order, except as otherwise indicated, the following definitions shall apply:

- a. a "set" is a group of loans, participations, investments, securities, or other assets related, by being sold or pledged to, purchased from, or exchanged with any persons, entities, or institutions acting together in a single transaction;
- b. "invest in" means to make, originate, purchase, acquire, guarantee, refinance, modify, extend, renew, or to commit to do any of these;
- c. "transfer" means to sell, assign, pledge, exchange, or to commit to do any of these;
- d. "real estate investment" means the net book value of real estate purchased, acquired by foreclosure or deed in lieu thereof, or owned in any manner, inclusive of any expenditures incurred in connection with holding or improving such real estate and following adjustment for any loss reserves or allowances;
- e. "affiliated person," as used in this Order, shall have the meaning as defined in 12 C.F.R. Section 561.5;
- f. "affiliate" shall have the meaning as defined in Section 23A of the Federal Reserve Act, 12 U.S.C. §371c.

## Books and Records

2. American Federal shall immediately make available for inspection by the OTS examiners all books and records relating to the affairs and ownership of American Federal, its subsidiaries, and its affiliates over which it has control. These books and records shall include, but are not limited to, bank account statements, accounting records, loan files, broker confirmations and all other documents related to American Federal and its subsidiaries. Complete books and records of the Institution shall be maintained on the premises of American Federal's Tulsa, Oklahoma office at all times.

3. American Federal shall maintain its books and records in compliance with the requirements of Sections 563.170 and 563.233 of the OTS Regulations, 12 C.F.R. §§563.170 and 563.233 (1990).

4. Within ten (10) days from the effective date of this Order, American Federal's board of directors shall establish policies and procedures to ensure that henceforth examiners of the OTS and the Federal Deposit Insurance Corporation are provided immediate and complete access to any and all records, documents, personnel and any other information of American Federal, and any of its subsidiaries, service corporations and affiliates, that the examiners deem necessary. American Federal shall adhere to such policies and procedures, and shall undertake to ensure that such policies and procedures are complied with by any and all of American Federal's subsidiaries, service corporations and affiliates.

5. Within twenty (20) days from the effective date of this Order, American Federal shall develop (and thereafter, maintain in an orderly fashion) sufficient records, including accounting records, systems and controls as required to provide a complete and accurate record of all business transactions involving the Institution and/or its subsidiaries and to represent accurately their financial condition. Furthermore, American Federal shall prepare its financial statements and other reports to the OTS in accordance with the OTS Regulations, policies, directives and other guidelines, and in accordance with generally accepted accounting principles, as required by Section 563.233 of the OTS Regulations, 12 C.F.R. §563.233. The board of directors shall certify in writing to the Regional Deputy Director of the Midwest Region, or his designee ("Regional Deputy Director"), within sixty (60) days of the effective date of this Order, that adequate records and accounting systems have been developed and implemented, and that all outstanding cash accounts, suspense accounts and general ledger accounts have been reconciled and appropriately recorded and reported on the Institution's financial statements.

#### Liquidity and Brokered Deposits

6. From and after the effective date of this Order, American Federal shall not accept, renew or roll-over any funds obtained, directly or indirectly, by or through any deposit broker, for deposit into one or more deposit accounts, except as permitted pursuant to Section 29 of the FDIA, as added by FIRREA, to be

codified at 12 U.S.C. 1831f, or pursuant to any waiver of the provisions of that statute by the Federal Deposit Insurance Corporation.

7. Within twenty (20) days from the effective date of this Order, American Federal shall develop a written liquidity and funds management policy and submit it to the Regional Deputy Director for review and approval. Within ten (10) days after the Regional Deputy Director's response, the liquidity and funds management policy, including any modifications or amendments requested by the Regional Deputy Director, shall be adopted by the board of directors of American Federal. The Institution shall thereafter immediately initiate measures detailed in the policy to the extent such measures have not previously been initiated. The funds management policy shall provide:

(a) An asset/liability management strategy to achieve an acceptable rate sensitivity balance between investments and funding sources;

(b) Procedures which will enable the board and management to monitor, on a monthly basis, the Institution's liquidity position, the Institution's performance in comparison to the liquidity ratio target, and the Institution's compliance with the liquidity level required by 12 C.F.R. 566.2 (1990); and

(c) A periodic review of possible alternative sources of funds.

8. Within thirty (30) days from the effective date of this Order, American Federal shall review all Thrift Financial Reports

("TFRs") filed with the OTS on and after February 28, 1990 and shall amend and file with the OTS amended TFRs which accurately reflect the financial condition of the Institution as of the date of each such Report. At a minimum, each such Report shall be amended to reflect the actual and accurate level of brokered deposits and liquid assets. At the time of submission of the amended TFRs, American Federal shall remit to the OTS the appropriate liquidity deficiency penalty, if any, as required by Sections 566.3 and 566.5 of the OTS Regulations, 12 C.F.R. §§ 566.3 and 566.5 (1990).

#### Loan Classification System

9. Within twenty (20) days from the effective date of this Order, the board shall establish a loan review committee to establish and implement an internal loan review and classification system ("Loan Classification System") to review, on a monthly basis, the Institution's loan portfolio and identify and categorize problem credits. At a minimum, the Loan Classification System shall provide for:

- (a) Identifying the overall quality of the loan portfolio;
- (b) The identification and establishment of valuation allowances for each loan in accordance with 12 C.F.R. §563.160 (1990);
- (c) An identification and grouping of loans that warrant the special attention of management;
- (d) For each loan identified, a statement of the amount and

an indication of the degree of risk that the loan will not be fully repaid according to its terms and the reason(s) why the particular loan merits special attention;

(e) An identification of credit and collateral documentation exceptions;

(f) The identification of and status of any violation of law, rule or regulation with respect to each adversely classified loan;

(g) An identification of loans not in conformance with the Institution's lending policy, and exceptions granted to the Institution's lending policy;

(h) A mechanism for reporting, on a monthly basis, to the board of directors on the status of each loan identified and the action(s) taken by management.

A copy of the reports submitted to the board, as well as documentation of the action taken by the Institution to collect or strengthen assets identified as problem credits, shall be kept with the minutes of the board of directors.

10. Within thirty (30) days from the effective date of this Order, American Federal shall establish and thereafter maintain adequate reserves for loan losses in accordance with Section 563.160 of the OTS Regulations, 12 C.F.R. §563.160 (1990). Such reserves shall be established by charges to current operating income, together with collection of assets previously charged off. In complying with the provisions of this paragraph, the board of directors of American Federal shall review the adequacy of the Institution's reserves for loan losses prior to the submission of

each TFR to the OTS. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of any increase in the reserves, and the basis for determination of the amount of the reserve provided.

11. Within ten (10) days from the effective date of this Order, American Federal shall, to the extent it has not already done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" by the OTS in its February 5, 1990 Report of Examination, and establish all other specific and general valuation allowances previously directed by the OTS. These charge-offs should be reflected on the Institution's TFR as of March 31, 1991. Reduction of these assets with proceeds of other loans made by the Institution is not considered collection for the purpose of this paragraph.

#### Lending Restrictions

12. From and after the effective date of this Order, without the prior written approval of the Regional Deputy Director or his designee, the Institution shall not, and shall not allow any wholly-owned or partly-owned subsidiary of the Institution to make, or commit to make, refinance or commit to refinance, all or any part of any loan. This paragraph shall not prohibit American Federal from honoring legally binding commitments, existing as of the effective date of this Order, to fund new loans; provided, that such new loans are approved by a majority of the board of directors. This paragraph shall further not prohibit American

Federal from renewing or extending the maturity of any loan; provided, that no new funds are advanced to the borrower or any third party and such extension or renewal is approved by a majority of the board of directors or the loan committee of the Institution.

13. Within thirty (30) days from the effective date of this Order, American Federal shall revise, adopt and implement written collection policies to provide effective guidance and control over the Institution's lending functions, which policies shall provide specific guidelines for placing loans on a non-accrual basis and specific guidelines for loan collection procedures.

14. Within thirty (30) days from the effective date of this Order, American Federal's board of directors shall take all reasonable steps, including directing the Institution's commencement of legal action, to obtain collection on all loans ninety (90) days or more delinquent. The board of directors shall further, on a monthly basis, review the loan delinquency reports and monitor American Federal's progress toward collection of delinquent loans.

#### Loans and Investments in Service Corporations

15. From and after the effective date of this Order, without the prior written approval of the Regional Deputy Director, American Federal shall not, directly or indirectly, make or commit to make, any loan, cash advance, extension or credit or any other investment in any service corporation or subsidiary.

16. Within ten (10) days from the effective date of this

Order, American Federal shall make written demand to Lenders Service Incorporated ("LSI"), for the repayment of the "cash advance" made by the Institution in December 1990 in the amount of \$1.5 million. The written demand shall require the repayment of said advance within five business days. If LSI fails or refuses to make the repayment within the specified timeframe, the Institution shall so notify the Regional Deputy Director.

17. The Institution shall comply in all respects with Sections 563.37 and 571.21 of the OTS Regulations, 12 C.F.R. §§ 563.37 and 571.21 (1990) to ensure the judicial recognition of the separate corporate existence of any service corporation. Furthermore, the Institution must develop an organizational structure that shall clearly define and delineate job accountabilities, functional responsibilities, communication channels, reporting lines of authority, and approval levels at each service corporation. No later than thirty (30) days after the issuance of this Order, and on a quarterly basis thereafter, the Institution shall submit a report to the Regional Deputy Director detailing its efforts to effectuate compliance with this requirement.

#### Transactions with Affiliates

18. The Institution and its subsidiaries shall comply in all respects with the requirements of Sections 23A, 23B and 22(h) of the Federal Reserve Act. Furthermore, the board of directors shall immediately take any measures necessary to bring the Institution

into full compliance with Sections 23A, 23B and 22(h) of the Federal Reserve Act, including but not limited to:

(a) within ten (10) days after the effective date of this Order, the Institution shall retain an independent accounting firm to prepare and provide to the Regional Deputy Director a list of all loans, extensions of credit, intercompany accounts, overdrafts, and contractual obligations (written or oral) outstanding as of the date of this Order to affiliates of the Institution. The information for each loan and extension of credit shall include:

- i. the identity of the obligor and guarantor, if any;
- ii. the date of the loan or extension;
- iii. the total amount disbursed;
- iv. the amount remaining to be disbursed;
- v. the terms of the loan or extension;
- vi. the publicly available terms for similar loans;
- vii. the collateral for the loan or extension;
- viii. the prospects for repayment; and,

(b) within ten (10) days after the effective date of this Order, the Institution shall retain independent legal counsel, acceptable to the Regional Deputy Director, to review all loans, extensions of credit, intercompany accounts, overdrafts, and contractual obligations (written or oral) to affiliates of the Institution currently in existence and to opine upon the regulatory compliance of each such transaction;

(c) Within thirty (30) days after the effective date of this

Order, the Institution shall submit to the Regional Deputy Director a written policy concerning loans and other extensions of credit (including overdrafts) to affiliates of the Institution. This policy, before being implemented, shall be subject to the review and approval of the Regional Deputy Director.

#### General Provisions

19. From and after the effective date of this Order, American Federal, and any of its subsidiaries or service corporations, shall not, without the prior written approval of the Regional Deputy Director of OTS, or his designee:

(a) Accrue, set funds aside for, or fund, directly or indirectly, any employee stock ownership plan ("ESOP"), pension plan, retirement plan, or profit sharing plan of any kind whatsoever, for the benefit of any employee, officer or director;

(b) Sell, contract to sell, transfer or exchange for consideration or disposal of, in any way whatsoever, any asset of American Federal valued in excess of \$15,000;

(c) Purchase, contract to purchase, invest in or obtain for consideration of any kind whatsoever, any speculative, high risk or high yield asset as more fully described in Thrift Bulletin No. 12;

(d) Pay, in any way whatsoever, any dividends on its common or preferred stock, including but not limited to cash or

in-kind dividends;

(e) Compensate any employee, officer or director, on an annualized basis, any amount of compensation, including but not limited to salary, bonus, pension plan contribution or any other remuneration, in excess of the level of compensation as of the twelve months ending December 31, 1990;

(f) Enter into any employment or severance contract(s) with any officer, employee or director; or

(g) Increase the total asset size of the Institution above the level of total assets reported as of December 31, 1990.

20. The board of directors shall ensure that the President of American Federal prepares a monthly compliance report for review by the directorate at each regularly scheduled board meeting. This report shall detail the Institution's compliance with the terms of this Order. The President shall present this report in its entirety to the directorate at each regularly scheduled meeting. The board shall also ensure that the President's report is entered into the minutes of each meeting, and that the Regional Deputy Director is provided with an approved copy of the subject minutes no later than ten business days following the end of each board meeting at which time said minutes were approved. Each official minute book copy of the minutes of the board's meetings shall be signed and dated by each director.

21. No later than the final day of each calendar month, the board of directors of the Institution shall file with the Regional Deputy Director a resolution, similar to the attached resolution,

signed by each director, certifying that the Institution has complied with all conditions of this Order.

22. The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.

23. This Order shall remain in effect until terminated by the OTS. The Regional Deputy Director will consider a request for the termination of this Order at the completion of an examination which finds substantive compliance with all the terms of this Order.

OFFICE OF THRIFT SUPERVISION

/S/

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Billy C. Wood  
Regional Director  
Midwest Region

RESOLUTION

WHEREAS, the Board of Directors of American Federal Bank, a Federal Savings Bank, Ada, Oklahoma, has been required to make certain certifications regarding the activities as outlined in the Order to Cease and Desist dated \_\_\_\_\_, 1991, and

WHEREAS, the Board of Directors have reviewed certain activities and transactions with the senior officers of the Institution occurring during the month of \_\_\_\_\_, 1991;

NOW, THEREFORE, BE IT RESOLVED, that based upon reports and information provided to the undersigned directors by the senior officers of the Institution, the undersigned members of the Board of Directors hereby certify that, to the best of our knowledge and belief, American Federal Bank, a Federal Savings Bank has complied with all conditions of the Order to Cease and Desist during the month of \_\_\_\_\_, 19\_\_.

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DATE: \_\_\_\_\_