

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

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In the Matter of )  
Ponce Federal Bank, FSB )  
Ponce, Puerto Rico )  
and its Directors, Officers, )  
Employees, Service Corporations, )  
and Affiliates )  
\_\_\_\_\_

Re: OTS Resolution No. ATL-91-30  
Dated: July 19, 1991

**STIPULATION**

This Stipulation is entered into by and between the Office of Thrift Supervision ("OTS"), a bureau within the United States Department of the Treasury, and Ponce Federal Bank, FSB, Ponce, Puerto Rico ("Ponce Federal").

1. Consideration. The OTS, based upon information reported to it, is of the opinion that grounds exist to initiate an administrative cease-and-desist proceeding against Ponce Federal pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), as amended, 12 U.S.C.A. § 1818(b), and Ponce Federal desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation. Ponce Federal, without admitting or denying that such grounds exist, and having considered the attached Order Pursuant to Stipulation (the "Order"), hereby stipulates and agrees to the following terms in consideration of the agreement by the OTS to refrain from initiating an administrative cease-and-desist proceeding against Ponce Federal with respect to the matters of concern to the OTS that are identified in the OTS's Report of Examination for the examination of Ponce Federal commenced on April 18, 1989.

(11/5/90)

2. Jurisdiction.

(a) Ponce Federal is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, as amended, 12 U.S.C.A. § 1813(c).

(b) Pursuant to Section 3 of the FDIA, the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. Therefore, Ponce 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, 12 U.S.C.A. § 1818(b).

3. Consent. Ponce Federal consents to the issuance by the OTS of the Order. Ponce Federal 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 FDIA, and upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, as amended, 12 U.S.C.A. § 1818(i).

5. Waivers. Ponce Federal, following consultation with its counsel, hereby waives the following legal rights:

- (1) the right to be served with a written notice of the OTS's charges against it (referred to as a Notice of Charges and Hearing) (see, e.g., Section 8(b) of the FDIA);
- (2) the right to an administrative hearing of the OTS's charges against it (see, e.g., Section 8(b) of the FDIA);

and

- (3) the right to challenge the OTS' issuance of the Order, including any such right provided by Section 8 (h) of the FDIA, or otherwise to challenge the validity of the Order.

WHEREFORE, in consideration of the foregoing, the OTS and Ponce Federal, upon a resolution duly adopted by its Board of Directors (a copy thereof is attached hereto), hereby execute this Stipulation.

OFFICE OF THRIFT SUPERVISION  
By:

/s/

PONCE FEDERAL BANK, PSB  
By:

/s/

Hans H. Hertell  
President



## COMPLIANCE WITH LAWS AND REGULATIONS

1. (a) The Bank and its affiliates (the "Respondents"), shall comply, and the Bank's Board of Directors shall take all necessary action for bringing about compliance by the Bank and its affiliates, with the following Federal laws and regulations:

- (1) Section 545.46 of the OTS Regulations, 12 C.F.R. § 545.46 (regarding commercial loan limitations);
- (2) Section 545.53 of the OTS Regulations, 12 C.F.R. § 545.53 (regarding finance leases);
- (3) Section 563.35 of the OTS Regulations, 12 C.F.R. § 563.35 (regarding restrictions involving loan services);
- (4) Section 563.43 of the OTS Regulations, 12 C.F.R. § 563.43 (regarding restrictions on loans and other transactions with affiliated persons of insured savings associations) and Section 11 of the Home Owners' Loan Act ("HOLA"), as amended by FIRREA, 12 U.S.C.A. § 1468 (West 1989)(incorporating Sections 22(h), 23A and 23B of the Federal Reserve Act, 12 U.S.C.A. §§ 375b, 371c, 372c-1 (West 1989) (regarding restrictions on loans and other transactions with executive officers and affiliates));
- (5) Section 563.93 of the OTS Regulations, 12 C.F.R. § 563.93 (regarding loans-to-one borrower restrictions);

(11/5/90)

- (6) Section 563.160 of the OTS Regulations, 12 C.F.R. § 563.160 (regarding internal asset classification system requirements);
- (7) Section 563.170 of the OTS Regulations, 12 C.F.R. § 563.170 (regarding record maintenance requirements);
- (8) Section 563.171 of the OTS Regulations, 12 C.F.R. § 563.171 (regarding real estate appraisal requirements);
- (9) Section 563.172 of the OTS Regulations, 12 C.F.R. § 563.172 (regarding real estate appraisals required upon foreclosure or deed in lieu of foreclosure);
- (10) Section 563.176 of the OTS Regulations, 12 C.F.R. § 563.176 (regarding interest rate risk management policy requirements);
- (11) Section 563.177 of the OTS Regulations, 12 C.F.R. § 563.177 (regarding Bank Secrecy Act requirements);
- (12) Section 563.180 of the OTS Regulations, 12 C.F.R. § 563.180 (regarding proper reporting requirements on the Thrift Financial Report); and
- (13) Section 571.7 of the OTS Regulations, 12 C.F.R. § 571.7 (regarding conflicts of interest).

(11/5/90)

(b) The compliance requirements of this Order shall not be construed as an authorization for the Respondents to engage in the activities governed by the aforesaid laws, rules, and regulations. To the extent that it is lawful for the Respondents to engage in such activities, and if provisions of this Order set forth more strict restrictions, limitations, and requirements than are set forth in applicable laws and regulations, then, under such circumstances, those activities shall be subject to the stricter restrictions, limitations, and requirements set forth in this Order.

#### OPERATIONAL RESTRICTIONS

##### Lending-Related Restrictions

2. (a) Except (i) as permitted in Paragraph 2(b) hereof, (ii) with the prior written notice of non-objection from the OTS (acting by and through its Director or his designee), (iii) for written loan commitments by the Bank which were outstanding and enforceable against the Bank at July 3, 1989, neither Ponce Federal nor any subsidiary thereof shall, directly or indirectly, make or purchase loans or otherwise extend any credit to any person or entity. For purposes of this Section 2(a), the Bank may renew an existing loan (including lines of credit), provided that such loan (i) is current and performing in accordance with its terms, but was not a loan the proceeds of which were used to make interest payments from an interest reserve account; provided, however, that a loan which is renewed or modified within 30 days of the maturity date shall be deemed to have been current and

(11/5/90)

performing for purposes hereof as long as the other requirements set forth in this sentence shall have been satisfied and the applicable loan file shall evidence the Bank's attempt to renew or modify the loan starting not less than 30 days prior to the loan maturity date; (ii) is authorized to be made under the Bank's then current underwriting standards; and (iii) is not otherwise a classified or criticized asset, as determined either by the Bank or by the OTS. If the renewal of any loan would not meet the conditions set forth in the preceding sentence, the Bank shall use its best efforts to have the loan repaid in full in a timely manner, and, subject to the limitation set forth in the next sentence, if the Bank's Board of Directors (or a committee duly appointed thereof), at a meeting duly called and held and following a due diligence review, determines (as reflected in the minutes of said meeting) that the borrower cannot repay or refinance the loan, then the Board of Directors (or committee) shall cause the Bank to foreclose against the collateral securing the loan, if any, unless the Board of Directors or the committee so appointed duly resolves (as reflected in the minutes of its meeting) that, upon a diligent review of the facts and circumstances, it is the Board's (or committee's) best judgment that a restructuring of the loan places the Bank in a better financial position than would be the case if the Bank foreclosed against the collateral. For purposes of this Section 2(a), the Bank's Board of Directors or a committee thereof shall be required

(11/5/90)

to review in advance loan renewals or modifications whereby the principal amount of such loan equals or exceeds \$75,000 (where the loan is unsecured) or \$150,000 (where the loan is collateralized).

(b) In accordance with written policies and procedures adopted by their respective boards of directors, the Respondents may make or purchase the following types of loans:

(i) qualifying mortgage loans, within the meaning of Section 567.1(u) of the OTS Regulations;

(ii) loans fully secured by deposit accounts maintained at Ponce Federal;

(iii) home equity loans where the aggregate amount of debt secured by the borrower's home at no time exceeds more than 80 percent of the appraised market value of the security property provided, however, that in connection with the origination of a second mortgage loan, the prior approval of the Board of Directors of the Bank (or a committee thereof) shall be required in connection with loan originations in excess of \$150,000;

(iv) education loans, guaranteed or insured under a Federal or State (Commonwealth) education-loan program;

(v) consumer loans, subject to the following restrictions: (a) the aggregate amount of all consumer loans outstanding from the Respondents, excluding automobile loans,

(11/5/90)

insured student loans and loans secured by the Bank's passbook accounts, shall not exceed more than \$100,000 to any one borrower including any member of the immediate family of such borrower who has the same home as the borrower (immediate family shall be construed within the meaning of 12 C.F.R. § 561.24), provided that the aggregate of all outstanding unsecured consumer loan funds to any one borrower does not exceed \$25,000 (or up to \$75,000 if the approval of the board of directors or a committee thereof is obtained); (b) the Respondents shall not, directly or indirectly, originate or purchase more than \$3.0 million of consumer loans during any fiscal quarter nor an aggregate of more than \$12.0 million during any 12 month period, excluding automobile loans, insured student loans and loans secured by the Bank's passbook accounts; and (c) the Respondents shall not, directly or indirectly, originate or purchase more than \$25.0 million of consumer automobile loans during any fiscal quarter nor an aggregate of more than \$90.0 million during any 12 month period; and

(vi) commercial automobile floor planning loans, subject to the following restrictions: (a) at any one time the aggregate amount of authorized and committed to automobile floor planning loans (including lines of credit) shall not exceed the aggregate amount of such loans authorized and committed to as of September 30, 1990 (the "Floor Planning Limit"); and (b) at any one time the aggregate dollar amount of all such loans to one borrower may not exceed 25.0 percent of the Floor Planning Limit

(11/5/90)

(the "One Dealer Limit"), provided however, the Respondents shall comply with any written directive issued by the OTS, requiring a smaller One Dealer Limit with respect to specifically identified borrowers.

(c) The OTS, in the exercise of its discretion, may from time to time provide any of the Respondents with a written notice of non-objection to permit extensions of credit otherwise prohibited hereby. Any of the Respondents may apply to the OTS for the issuance of such written notices of non-objection. Such applications must be submitted in writing to the appropriate representative of the OTS Director located at the OTS Regional Office responsible for supervision of the Bank. The OTS will not process such applications unless they are accompanied by (i) a resolution duly adopted by the applicant's Board of Directors wherein the Board, upon due inquiry has determined the proposed lending activity to be in the best interests of the applicant (Ponce Federal or affiliate) and has authorized the activity contingent upon OTS non-objection, and (ii) such documentation and information as the OTS may deem appropriate.

3. (a) Except (i) with the prior written notice of non-objection from the OTS (acting by and through its Director or his designee) or (ii) as otherwise permitted by paragraph 3(b) hereof, neither the Bank nor any affiliate thereof shall, directly or indirectly, make any loans or otherwise extend any credit to any "affiliated person" of the Bank (or any affiliate thereof)

(11/5/90)

within the meaning of the OTS Regulations. The limitations hereof are intended to expand and not to limit the restrictions set forth in the HOLA, Federal Reserve Act, and the regulations of the OTS.

(b) The limitations of paragraph (a) hereof shall not prevent the Bank (or any subsidiary thereof) from making any lawful loan to an affiliated person where the loan is of the following types: (i) an education loan guaranteed or insured under a government program; and (ii) an owner-occupied, first-lien residential home loan provided that the principal amount of such loan does not exceed 80 percent of the appraised market value of the security property, provided, however, that such loan may not exceed 90 percent of the appraised market value of the security property if private mortgage insurance is obtained for the amount in excess of 80 percent of the appraised market value and, provided further, that such loans may exceed 80 percent of the appraised market value of the security property to the extent that they are insured or guaranteed by the Federal Housing Administration or the Veterans Administration.

(c) Except with the prior written notice of non-objection from the OTS (acting by and through its Director or his designee), neither Ponce Federal nor any affiliate thereof shall, directly or indirectly, extend any credit to (i) Ramiro L. Colón, Jr., (ii) Wendell Colón (collectively with Ramiro L. Colón, Jr., the "Colóns"), (iii) any member of the immediate family (within the meaning of 12 C.F.R. § 561.24) of either of the

(11/5/90)

Colóns, who has the same home as either of them or who is a director or officer of Ponce Federal or any affiliate thereof, or (iv) any affiliate or partnership of either of the Colóns, or any company or entity in which the Colóns have a controlling interest, including, but not limited to, those companies that the OTS has brought to the attention of the Bank.

4. Neither Ponce Federal nor any subsidiary thereof shall make any loans with terms more favorable than those available to the general public (as disclosed in written term sheets maintained by the Bank) to (i) any person who is a relative of an affiliated person, or (ii) to any company, corporation, partnership or other entity owned or controlled by any relative of an affiliated person.

5. Neither Ponce Federal nor any subsidiary thereof shall, directly or indirectly, make or purchase any loans or otherwise extend credit to any person or entity where all or part of the proceeds are intended to be used in any manner in connection with the purchase, sale, breeding, care, or maintenance of horses or horse farms.

6. The Respondents shall not permit the employees of the automobile dealers who have obtained floor planning lines of credit from them to conduct dealer inventory inspections for the Bank or its affiliates.

(11/5/90)

Other Restrictions

7. Neither the Bank nor any subsidiary thereof shall, directly or indirectly, engage in any risk controlled arbitrage ("RCA") activities (except for activities that may be required in connection with the prudent monitoring of an RCA transaction entered into in November 1988) until the OTS (acting by and through its Director or his designee) has provided the Board of Directors of the Bank with a written notice stating that the OTS has no objection to the Bank's implementation of its written RCA plan submitted to the OTS. Additionally, any activities that may be required in connection with the prudent monitoring of the Bank's November 1988 RCA transaction must be consistent with all OTS rules, regulations and bulletins regarding Risk Controlled Arbitrage.

8. Neither Ponce Federal nor any subsidiary thereof shall permit any person or entity controlled by any person to use for his (or its) personal benefit (i) any of their assets or resources, or (ii) the services of any employee (during work hours), provided, however, that the limitations of clauses (i) and (ii) shall not prevent the provision of benefits customarily provided to officers and employees of the Bank, pursuant to written authorization of the Bank's Board of Directors, including by way of example but not as a limitation, the use by Bank officers and employees of Bank-owned motor vehicles and the payment of gas and insurance related thereto.

(11/5/90)

9. Except with the prior written notice of non-objection from the OTS (acting through its Director or his designee) Ponce Federal (on a consolidated basis with its subsidiaries) shall not: (i) cause or permit its total assets to exceed \$1,323,645,000, the amount reported on its Thrift Financial Report as of June 30, 1990, except that such total assets may increase solely in an amount equal to the net interest credited to its deposit liabilities; or (ii) pay any dividends or otherwise make any capital distributions within the meaning of Section 563.134 of the OTS's regulations (codified at 12 C.F.R. § 563.134). The limitation set forth in this clause (i) of Section 9 shall be calculated on a quarterly basis; provided, however, that the Bank's total assets at any month-end shall in no event be more than 5% above the amount set forth on its June 30, 1990 Thrift Financial Report, excluding the net interest credited to its deposit liabilities. If the Bank's total assets at any month-end exceeds the amount so reported at June 30, 1990, excluding net interest credited to its deposit liabilities, the Bank shall, within seven calendar days of such month-end, provide the OTS with written notice thereof, which shall set forth a statement of the reasons for exceeding such limitation and how the Bank intends to comply in a timely manner with the requirements of clause (i) of Section 9.

**AFFIRMATIVE CORRECTIVE ACTION**

10. (a) Ponce Federal and its subsidiaries shall maintain adequate and prudent general and specific valuation allowances relative to their assets.

(11/5/90)

(b) At least quarterly, the Board of Directors of Ponce Federal, at a meeting duly called and held, shall (i) review a detailed written report prepared by management concerning the adequacy of the Bank's valuation allowances on a consolidated basis, and (ii) adopt one or more resolution(s) addressing the adequacy of such valuation allowances.

11. (a) Ponce Federal, no later than 60 days from the date hereof, shall perform an analysis of its cost of funds relative to other federally insured savings banks and savings associations in Puerto Rico. The Board of Directors shall review and analyze the results of this analysis, and if appropriate, shall instruct management to take such actions as are necessary to reduce Ponce Federal's cost of funds to a level comparable with other federally insured savings associations and savings banks in Puerto Rico. By no later than 60 days from the date hereof, the Bank's Board of Directors shall file with the OTS a detailed written report of the results of its review and analysis of its cost of funds and brokered deposits; such report shall be sent to the Bank's regulatory supervisor at the appropriate office of the OTS.

(b) Ponce Federal shall perform a detailed written analysis of its current and projected utilization of deposits obtained through brokers and/or money-desk operations, which analysis shall separately identify "936 funds," certificates of deposit, and other non-core deposits received (or to be received through deposit brokers or money desk operations). Within 60 days

(11/5/90)

from the date hereof, the Bank's Board of Directors shall adopt and implement a plan designed to prudently reduce the Bank's utilization of brokered deposits (other than brokered 936 funds). The plan shall, inter alia, (i) detail development of more stable core deposits, and (ii) set forth a definitive timetable establishing goals and deadlines for the reduction in the level of brokered deposits (other than 936 funds).

(c) By no later than 60 days from the date hereof, the Bank's Board of Directors also shall adopt one or more resolutions authorizing and implementing a plan intended to further diversify the Bank's brokered deposit sources such that by December 31, 1991, no one source is responsible for placing with the Bank funds representing more than 15% of the Bank's total deposit liabilities. If, in attempting to implement the plan so submitted, the Bank believes that the facts and circumstances warrant a reconsideration of the percentage limitation set forth in the preceding sentence, the Bank shall seek a change in or exception to such percentage limitation by means of a request for a written letter of nonobjection from the OTS (acting by and through its Director or his designee).

(11/5/90)

12. (a) Ponce Federal, by no later than <sup>July</sup> ~~January~~ 15, 1991, shall amend its business plan to include, at a minimum, the following items:

- a. an orderly plan for future growth;
- b. specific goals and targets for each department, including provisions for staffing requirements or peripheral services needed to achieve these goals;
- c. contingency plans in the event that original assumptions or projections prove to be incorrect; and
- d. identification of the management officials responsible for implementing the business plan.

(b) The Bank's Board of Directors shall cause each of the Bank's budgets to reflect the Bank's actual operating position, taking into consideration actual net income, provisions for loan losses, loans in excess of anticipated budget growth and, to the extent feasible, changes in interest rates (including the prime rate). In addition, the Bank's Board of Directors shall monitor budget variances on at least a quarterly basis.

13. (a) The Bank's Board of Directors, by no later than 60 days from the date hereof, shall adopt one or more resolution(s) establishing and requiring the implementation of a written policy manual concerning the Bank's regular internal review and monitoring of the Bank's compliance with the following: statutes, laws, rules, regulations and board of director approved written

operational policies. Such Internal Review Policy Manual shall address, inter alia, the following: (i) interest rate risk management; (ii) internal loan review; (iii) regulatory asset limitations (e.g., loans-to-one-borrower and aggregate commercial loans as a percentage of total assets); (iv) commercial real estate lending; (v) a Code of Ethics; (vi) Bank Secrecy Act compliance; and (vii) prudent guidelines regarding loans to affiliated persons. Findings of such internal reviews shall be reported directly to the board of directors and shall thus remain exclusively independent from management.

(b) By no later than 60 days from the date hereof, the Bank's Board of Directors, at a meeting duly called and held, shall duly adopt a resolution providing for the timely establishment and implementation of procedures designed to facilitate the Bank's compliance with the terms of this Order and with all applicable statutes, laws, rules and regulations. The finalized resolution shall be forwarded to the Bank's regulatory supervisor at the appropriate office of the OTS.

(c) The Boards of Directors of the Bank and each of its affiliates, no later than 60 days from the date hereof, shall designate one or more senior management officials to perform, on at least a quarterly basis, a review of each such company's compliance with OTS regulations and with this Order. The results of this review shall be reported directly to Ponce Federal's board of directors, which shall take whatever steps are necessary to

(11/5/90)

assure such compliance. The results of the review, corrective actions taken (if needed) and copies of the board minutes at which such compliance was discussed shall be forwarded to the Bank's regulatory supervisor at the appropriate office of the OTS no later than 30 (thirty) days after the end of each of the Bank's quarters.

#### MISCELLANEOUS PROVISIONS

14. The Stipulation is made a part hereof and is incorporated herein by this reference.

15. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided by the provisions of this Order, shall, insofar as applicable, have meanings as defined in the regulations, policy statements, or bulletins issued by the OTS (many of which are codified or to be codified at Chapter V of Title 12 of the Code of Federal Regulations), and any such technical words or terms used in this Order and undefined in said regulations, policy statements, or bulletins shall have meanings that accord with the best custom and usage in the savings and loan or banking industries, as applicable. For purposes of this Order, all references to regulations, policy statements, bulletins, memoranda and publications shall include any successor regulations, policy statements, bulletins, memoranda and publications.

