

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
SAN FRANCISCO FEDERAL SAVINGS AND )  
LOAN ASSOCIATION )

Resolution No. SF-91- 017

April 30, 1991

STIPULATION AND CONSENT TO  
ISSUANCE OF ORDER TO CEASE AND DESIST  
AND PAY CIVIL MONEY PENALTIES

The Office of Thrift Supervision ("OTS"), by and through its Regional Director, and San Francisco Federal Savings and Loan Association, San Francisco, California (the "SF Federal"), stipulate and agree as follows:

1. Consideration. The OTS, based upon information it has obtained and reviewed, is of the opinion that the grounds exist to initiate an administrative cease and desist proceeding against SF 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"), codified at 12 U.S.C. § 1818(b) and to assess civil money penalties pursuant to Section 8(i) of

FDIA based on the matters set forth in the letters of February 25 and March 14, 1991 from the OTS to SF Federal's Board of Directors ("OTS Letters") and in the Notice of Charges to be issued by the OTS, all of which are attached hereto as Exhibits 1, 2 and 3, respectively, and are incorporated here by reference. SF Federal desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings 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 and/or civil money penalty proceedings against SF Federal with respect to any of the matters covered in the OTS Letters, the Notice of Charges and the accompanying Order to Cease and Desist and Pay Civil Money Penalties ("Order"). This Stipulation and Consent Order are entered into solely to settle the matters referred to above and in the Order.

2. Jurisdiction.

(a) SF Federal is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' 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, 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, SF 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, codified at 12 U.S.C. § 1818(b) and assess civil money penalties pursuant to 8(i)(2) of the FDIA as amended by FIRREA, codified at 12 U.S.C. § 1818(i)(2).

3. Consent. SF 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 the law.
  
4. Finality. The Order is issued under Section 8(b) and 8(i) of the FDIA, as amended by FIRREA, codified at 12 U.S.C. § 1818(b) and 12 U.S.C. § 1818(i)(2). Upon its execution by the Regional Director and a majority of the directors of SF Federal, 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 by FIRREA, codified at 12 U.S.C. § 1818(i).

5. Waivers. SF Federal waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, as amended by FIRREA, codified at 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, as amended by FIRREA, codified at 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.
  
6. Counterparts. This Stipulation may be executed in counterparts, and such executed counterparts together shall constitute one executed whole.

WHEREFORE, in consideration of the foregoing, the OTS, by and through its Regional Director, and SF Federal, by each of its directors, execute this Stipulation and Consent to Issuance of Order to Cease and Desist and Pay Civil Money Penalties.

**BOARD OF DIRECTORS  
San Francisco Federal Savings  
and Loan Association**

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THE OFFICE OF THRIFT SUPERVISION

April 30, 1991

Date

/S/

By: Michael Patriarca  
Director, West Region

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of )  
 )  
SAN FRANCISCO FEDERAL SAVINGS AND )  
LOAN ASSOCIATION )

Resolution No. SF-91-017  
April 30, 1991

ORDER TO CEASE AND DESIST  
AND PAY CIVIL MONEY PENALTIES

WHEREAS, San Francisco Federal Savings and Loan Association ("SF Federal") has executed a Stipulation and Consent to Issuance of Order to Cease and Desist and Pay Civil Money Penalties ("Stipulation") which is incorporated here by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director; and

WHEREAS, SF Federal, in the Stipulation, and by the signatures of the Board of Directors hereto, has consented and agreed to the issuance of this Order to Cease and Desist and Pay Civil Money Penalties ("Order") pursuant to Section 8(b) and 8(i) of the Federal Deposit Insurance Act, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA") codified at 12 U.S.C. § 1818(b) and (i)).

I. ORDER

NOW THEREFORE IT IS ORDERED that:

## Independence of Annual Audit

1. SF Federal will provide its full cooperation in conjunction with a review of the 1990 audit work performed by KPMG Peat Marwick ("Peat Marwick") in connection with its audit of the financial statements of SF Federal for the fiscal year ended December 31, 1990 ("1990 audit") by an independent public accounting firm chosen by the OTS ("Independent Firm"). The scope and manner of such review, and the audit work to be performed in connection therewith, shall be determined after discussion among OTS, the Independent Firm and SF Federal and shall be that necessary to permit the Independent Firm to determine whether any lack of independence of Peat Marwick has had a material adverse effect on the audit as performed by Peat Marwick (to be defined based on discussions with the Independent Firm) and shall be satisfactory to the OTS. Additional audit work will be performed to the extent determined necessary by OTS. OTS reserves the right to reject the 1990 audit work performed by Peat Marwick if the Independent Firm determines that there was in fact such a material adverse effect, and for such other reason(s) as OTS may be authorized to use as a basis for such rejection. All costs of the review and any subsequent audit work will be borne by SF Federal and/or Peat Marwick.

2. Selection of the independent public accounting firm for the institution's future annual audits for the fiscal years ending December 31, 1991 and 1992 will be subject to prior written OTS approval. The application for such approval shall provide full disclosure of all financial and immediate family relationships between partners/professional employees of the independent public accounting firm who are expected to work on or supervise the engagement or their immediate family members and SF Federal. (As used in this Order, the phrase "immediate family" means the living spouses, parents, brothers, sisters and/or natural or adopted children of the professional employees in question.) SF Federal shall be entitled to rely, where such reliance is reasonable, on the designation by such public accounting firm regarding the identify of such professional employees and their immediate family members.
  
3. SF Federal shall not make any loan, and shall not enter into any non-depository business transaction with, any professional employee of SF Federal's current outside auditing, legal, appraisal or financial consulting firms or entities, who are expected to work on or supervise the engagement or their immediate family members, and SF Federal's Board of Directors shall adopt a formal policy to that effect. With respect to any auditing, legal,

appraisal or financial consulting firm or entity retained by SF Federal on or after the effective date of this Order, any professional employee of any such firm or entity who has himself/herself, or any of whose immediate family members has, (a) in the normal course of business, obtained a loan from or entered into a non-depository business transaction with SF Federal at any time within one year preceding the date of such retention, or (b) obtained a loan from SF Federal at any earlier time that either was not obtained in the normal course of business, or is a non-performing and/or delinquent loan as of the date of such retention, shall be prohibited by SF Federal from working on or supervising the engagement, and SF Federal's Board of Directors shall adopt a formal policy to that effect. SF Federal shall, insofar as the identity of such professional employees and their immediate family members is concerned, be entitled to rely, where such reliance is reasonable, on the designation by such auditing, legal or financial consulting firms or entities regarding such identities.

4. SF Federal shall adopt within thirty (30) days from the effective date hereof and comply thereafter with procedures acceptable to the OTS that require its current and future audit, legal, and financial consulting firms or entities to demonstrate and document its independence.

5. SF Federal shall adopt within thirty (30) days from the effective date hereof and comply thereafter with procedures acceptable to the OTS that validate the independence of its current and future audit, legal, and financial consultant firms or entities based primarily on the information provided by SF Federal by such firms or entities pursuant to the procedures referred to in paragraph 4 above.
  
6. Each appraisal obtained by SF Federal from an outside appraiser or appraisal firm shall contain a representation under oath or a declaration that the appraiser(s) who worked on or supervised the appraisal has(have) no loan or non-depository business transaction with SF Federal obtained or entered into (a) on or after the effective date of this Order with respect to any such appraiser or appraisal firm currently used or approved for use by SF Federal, or (b) at any time within one year of the date such appraisal is submitted to SF Federal in the case of any other appraiser or appraisal used or approved for use by SF Federal subsequent to the effective date of this Order, and that to the best of the knowledge, information and belief of such appraiser(s), none of their immediate family members has any such loan or non-depository business transaction. Such

representation under oath or declaration shall further state that such appraiser(s) has no outstanding loan from SF Federal that was obtained other than in the normal course of business, or that is non-performing or delinquent as of the date of such representation or declaration. SF Federal shall not be deemed to have violated the requirements of paragraph 3 above prohibiting loans and non-depository business transactions with its then-current outside appraisers or appraisal firms with respect to any particular such firm or individual so long as SF Federal complies with the provisions of this paragraph and no information has otherwise come to the attention of SF Federal indicating that the representation under oath or declaration of such appraisal firm or individual appraiser is incorrect. If SF Federal is able to demonstrate to OTS that compliance with the foregoing provisions of this paragraph 6 has a material adverse effect on SF Federal's ability to obtain adequate appraisals on a competitive basis, the OTS agrees to modify the provisions of this Order regarding appraisers to alleviate such material adverse effect.

#### Loan Underwriting

7. SF Federal shall implement the following procedures and policies in a manner acceptable to OTS within thirty (30)

calendar days, and thereafter comply with such procedures and policies:

- a) all underwriting information required by any law, rule or any of SF Federal's then-applicable loan policies to be considered by SF Federal in connection with the making of any loan shall be analyzed and recorded prior to the issuance of a binding commitment to make such loan. SF Federal may continue to process "quick-qualifier loans," (where such "quick-qualifier loans are part of a program approved by the Board of Directors) with respect to which commitments are approved subject to fulfillment of certain conditions (including the receipt of certain underwriting information) in a manner and in substance satisfactory to the authorized committee or individual committee member that conditionally approved the commitment, but all such conditions, including particularly the receipt of any underwriting information required to be considered of any law, rule or any of SF Federal's then-applicable loan policies, must in fact be fulfilled, to the satisfaction of, and in the case of such underwriting information, be received and considered by, the committee or individual committee member who conditionally approved the commitment in the first instance, or in cases where such committee

member is unavailable for such purpose, by another committee member with authority to approve such loans.

b) all exceptions to loan policies to be:

i) documented as to the reasons why the exception is being made;

ii) signed by the authorized individual granting the exception; and

iii) disclosed as to borrower, amount, nature of exception, and reason(s) therefor to the Board of Directors on a monthly basis as part of its board package, with the exception of consumer loans and credit card loans.

c) all financial information that any law, rule or any of SF Federal's then-applicable loan policies requires be obtained for underwriting purposes in connection with any investment or extension of credit, and any credit and collateral analyses that any of SF Federal's then-applicable loan policies requires be made, will be maintained in the subject loan files open to audit and regulatory examination;

provided, however, that with respect to any Association employee loan file, employee financial information and credit and collateral analyses may be kept in a separate file provided that all such loans be processed under SF Federal's normal required underwriting procedures for such loans, and all such information and analyses be made available for audit and regulatory examination and be maintained in a central location, and that a written notation be placed in the subject loan file as to where such information and analyses are located.

- d) debt-to-income ratio and other analysis of the prospective borrower's ability to repay the loan in accordance with its terms shall be performed in conjunction with the underwriting of individual owner lot loans and individual owner construction loans, and an analysis of the prospective borrower's ability to repay the loan in accordance with its terms and a source of repayment analyses shall be performed in conjunction with the underwriting of each developer construction loan.
  
- e) a financial statement which is current at the time that the loan application is made (i.e., based on information as of a date no later than three months

prior to the date of application), signed by the borrower disclosing the financial ability of the borrower to repay the loan shall be obtained in connection with each loan request. An executed and completed loan application form substantially in the form currently used by SF Federal, the financial statement portion of which contains information as of a date no later than three months prior to the date the application form is submitted to SF Federal by the prospective borrower shall constitute such a financial statement.

- f) with respect to loans secured by real estate, SF Federal shall verify borrower-provided information regarding deposits, employment, length of employment, income from employment, installment debt obligations and payment history, current outstanding mortgage amount and payment history, the value of the property that collateralizes the loan, and other material information required under rule, law, or SF Federal's loan underwriting policies; provided, however, that such verification may be waived in conjunction with a Board-approved limited documentation single family residential funding program. All such required verification shall be documented and such documentation shall be

maintained in the subject loan file (except that such documentation with respect to verification of information regarding an SF Federal employee may be maintained in a separate file pursuant to the provisions of paragraph 7(c) above); and

- g) documented reconciliation of all material inconsistencies in credit reports, loan applications, and other underwriting materials shall be maintained in the subject loan file.

#### Internal Audit Function

- 8. SF Federal shall use its best efforts and exercise due diligence to retain, within sixty (60) days, a new Chief Internal Auditor acceptable to the OTS, and within sixty (60) days of such retention, shall develop and submit to the OTS for review and non-objection, a comprehensive internal audit program that focuses on higher-risk areas of SF Federal's operations, and which shall provide for at least the following:

- a) establishment of and adherence to an internal audit schedule;

- b) establishment of written internal audit procedures for all areas to be audited, as well as workpaper and documentation standards;
- c) a description of the specific information to be provided in reports by the internal audit group;
- d) appropriate documentation of specific issues discussed in internal audit committee meeting minutes; and
- e) establishment of a tracking system to monitor the status of corrective actions recommended by SF Federal's internal auditor.

Other Relief

9. SF Federal shall pay \$75,000 in civil money penalties to settle the civil money penalty claims of OTS against SF Federal based on the matters set forth in OTS' letters of February 25 and March 14, 1991, to SF Federal's Board of Directors attached as Exhibits 1 and 2, respectively, to the Stipulation ("OTS Letters"), the Notice of Charges attached as Exhibit 3 to the Stipulation, and the Stipulation.

10. SF Federal consents to this Order for the purpose of resolving the claims and matters referred to in the OTS Letters, the Stipulation, the Notice of Charges referred to in the Stipulation, and this Order only. Such consent does not resolve, effect or preclude any other civil or criminal proceeding which might be brought against SF Federal other than as expressly provided for in this Order and the consideration clause of the accompanying Stipulation. SF Federal agrees by signing this document that it will not assert a bar under double jeopardy against any future proceeding by another governmental agency.
  
11. SF Federal shall sell the institution's loans to KPMG engagement partner for the 1990 audit to a third party if such loan is not refinanced elsewhere by June 30, 1991.
  
12. SF Federal shall make full and appropriate disclosure about this agency's determination and actions to date with respect to the institution's series of loans to its audit engagement partner by providing SFFed Corp. with all relevant information regarding this Order such that appropriate disclosures may be made in SFFed Corp.'s 1990 Annual Report 10-K filing and/or an 8-K filing with the Securities and Exchange Commission.

**Counterparts**

13. This Order may be executed in counterparts, and such executed counterparts together shall constitute one executed whole.

**II. DEFINITIONS**

1. 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 Code of Federal Regulations, Title 12, Chapter V; or as defined in FIRREA, the FDIA, or the Home Owners Loan Act of 1933 ("HOLA"), and any such words or terms undefined in the foregoing shall have meanings that accord with the best custom and usage in the savings association industry.

**III. EFFECTIVENESS**

1. This Order is effective April 26, 1991.

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2. This Order shall remain effective and enforceable until such time as the OTS shall dismiss this final Order.

BOARD OF DIRECTORS  
San Francisco Federal Savings  
and Loan Association

/S/	<u>4/26/91</u> Date
/S/	<u>4-26-91</u> Date
/S/	<u>4-26-91</u> Date
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Date

**THE OFFICE OF THRIFT SUPERVISION**

/S/

By: Michael Patriarca  
Regional Director, West Region

April 30, 1991  
Date

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