

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

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FHLBB  
OFFICE OF  
ENFORCEMENT

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In The Matter of )  
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Poughkeepsie Savings Bank, )  
FSB )  
Poughkeepsie, New York )  
 )  
and its Directors, Officers, )  
Employees, Service )  
Corporations and Affiliates )  
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Re: Northeast Regional Director  
Resolution No. JC-91-26

Dated: October 31, 1991

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 Northeast Region, Jersey City, New Jersey and Poughkeepsie Savings Bank, FSB, Poughkeepsie, New York (the "Association") stipulate and agree as follows:

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 the Association 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"), 12 U.S.C. § 1818(b). The Association desires to cooperate with the OTS and 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 the Association with respect to the matters covered in the accompanying Order to Cease and Desist ("Order").

2. Jurisdiction.

(a) The Association is a "savings association" within the meaning of Section 3 of the FDIA and Section 2 of the Home Owners' Loan Act, as amended by FIRREA. Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 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



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and its Directors, Officers, )  
Employees, Service )  
Corporations and Affiliates )  
\_\_\_\_\_

**ORDER TO CEASE AND DESIST**

WHEREAS, Poughkeepsie Savings Bank, FSB, Poughkeepsie, New York (the "Association"), through its directors, has executed a Stipulation and Consent to Issuance of Order to Cease and Desist, which is incorporated herein by reference ("Stipulation") and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director for the Northeast Regional Office as of the date indicated above ("Effective Date"); and

WHEREAS, the Association in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) 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") (12 U.S.C. § 1818(b)).

NOW THEREFORE, the OTS issues this Order to the Association and its directors, officers, employees, service corporations, subsidiaries and affiliates.

**SECTION I -- COMPLIANCE WITH LAWS AND REGULATIONS**

1.1. The Association shall immediately cease and desist from any violation of, or the aiding or abetting of any violation of:

- (a) Section 563.160 of the OTS Regulations, 12 C.F.R. § 563.160 and Section 571.26 of the OTS Regulations, 12 C.F.R. §571.26 (regarding classification of assets);

(b) Section 563.170 of the OTS Regulations, 12 C.F.R. §563.170 (regarding examinations and audits; appraisals; establishment and maintenance of records);

(c) Section 563.172(a) of the OTS Regulations, 12 C.F.R. §563.172(a) (regarding appraisal of real estate owned);

(d) Section 563.233 of the OTS Regulations, 12 C.F.R. §563.233 (regarding accounting principles and procedures); and

(e) Part 564 of the OTS Regulations, 12 C.F.R. §564.1 et seq. (regarding appraisals).

1.2. The compliance requirements of this Order shall not be construed as an authorization for the Association or its affiliates to engage in the activities governed by the aforesaid laws, rules, and regulations. To the extent that it is lawful for the Association or its affiliates 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.

## **SECTION 2 -- LENDING AND INVESTMENT RESTRICTIONS**

2.1. Prohibited Loans and Investments. Unless otherwise permitted by the Regional Director or expressly permitted by this Order, the Association or any subsidiary or service corporation of the Association shall not directly or indirectly, make, invest in, purchase, sell, refinance, extend or otherwise modify, or commit to make, invest in, purchase, sell, refinance, extend or otherwise modify (all such activities, for the purposes of this Section 2, collectively, "Make") any loans or investments.

2.2. New Loans.

(a) Residential Real Estate Loans. The Association shall be permitted to Make Residential Real Estate Loans. Any Residential Real Estate Loans which are not originated by Market Street Mortgage Corporation must be secured by properties located in the Community Reinvestment Act Area or in Ulster, Putnam, Westchester and Rockland counties, New York.

(b) Consumer Loans. The Association shall be permitted to Make Consumer Loans, provided that such Consumer Loans are made to persons residing in the Community Reinvestment Act Area or in Ulster, Putnam, Westchester and Rockland counties, New York.

(c) Multi-Family Real Estate Loans. The Association shall be permitted to Make Multi-Family Real Estate Loans provided that the following conditions are satisfied:

- (i) the loan-to-value ratio is less than or equal to 80%;
- (ii) the debt service coverage ratio is equal to or greater than 1.15;
- (iii) the loan does not exceed 10% of the Association's tangible capital; and
- (iv) the location of the real estate being financed falls within the Community Reinvestment Act Area or in Ulster, Putnam, Westchester and Rockland counties, New York.

(d) Other Commercial Real Estate Loans. The Association shall be permitted to Make Other Commercial Real Estate Loans provided that the following conditions are satisfied:

- (i) the loan-to-value ratio is less than or equal to 75%;
- (ii) the debt-service coverage ratio is equal to or greater than 1.20;
- (iii) the loan does not exceed 10% of the Association's tangible capital; and
- (iv) the location of the real estate being financed falls within the Community Reinvestment Act Area or Ulster, Putnam, Westchester and Rockland counties, New York.

2.3. Changes in Loans. The Association shall be permitted to modify, extend, refinance or otherwise restructure ("Change" or "Changes") certain loans as follows:

(a) No New Funds - Non Performing Loans and Performing Commercial Loans. The Association shall be permitted to Change Non Performing Loans and Performing Commercial Loans provided that no new funds are to be advanced and:

- (i) for any of such loans in the aggregate loan to one borrower ("LTOB") amount of more than \$1 million but less than or equal to 10% of the Association's tangible capital, upon the closing of any such Change, the Association shall provide the Regional Director with a summary of such Change, including the terms of the loan and the Change and the status of the borrower; or
- (ii) for any of such loans in the aggregate LTOB amount of more than 10% of the Association's tangible capital, no such Change shall be made without the prior written notice of non-objection to such Change of the Regional Director.

(b) New Funds - Non Performing Loans and Performing Commercial Loans. The Association shall not be permitted to Change Non Performing Loans and Performing Commercial Loans if such Change involves the advancing of new funds without the prior written notice of non-objection to such Change of the Regional Director.

(c) Performing Multi-Family Real Estate Loans and Performing Other Commercial Real Estate Loans. The Association shall be permitted to Change Performing Multi-Family Real Estate Loans and Performing Other Commercial Real Estate Loans provided that such Change results in a loan which conforms to the criteria specified in Sections 2.2(c) or 2.2(d) respectively. In the event that the loan does not conform to such criteria:

- (i) and no new funds are to be disbursed, the Association shall comply with the notice and non-objection provisions of Section 2.3(a); or
- (ii) if new funds are to be disbursed, no such Change shall be made without the prior written notice of non-objection to such Change of the Regional Director.

2.4. REO. The Association shall be permitted to dispose of REO provided that:

(a) for any disposition in an amount exceeding \$1 million but less than or equal to 10% of the Association's tangible capital, upon the closing of such disposition, the Association shall provide the Regional Director with a summary of the terms of such disposition; or

(b) for any disposition in an amount of more than 10% of the Association's tangible capital, no such disposition shall be made without the prior written notice of non-objection of the Regional Director.

2.5. Commitments and Loans in Process. The Association shall be permitted to advance funds necessary to honor existing legally binding commitments in existence as of the Effective Date to fund loans ("Commitments") or loans-in-process ("Loans in Process"), provided that the following conditions are satisfied:

(a) Prior to finalizing any Commitment or making any disbursement under Loans In Process, the Association shall affirmatively determine that all material conditions precedent to the Commitment or disbursement have been satisfied;

(b) Within 30 days of the Effective Date of this Order, the Association shall provide the Regional Director with a list of all Commitments and Loans In Process existing as of March 29, 1991 relating to Multi-Family Residential Real Estate Loans, Other Commercial Real Estate Loans and Commercial Loans. This list should include the following information: (i) amount and type of Commitments and Loans In Process (including whether firm or standby); (ii) date the Commitment was issued; (iii) identity of the borrower and amount of other outstanding loans or Commitments and Loans In Process to the borrower; (iv) type, location, and value of the collateral; (v) schedule of anticipated funding; (vi) amount of any commitment fee received and date of receipt; and (vii) amount and portion of interest and fees funded by loans proceeds, if any.

(c) For any Commitments or Loans in Process that exceed the LTOB amount of \$5 million, the Association shall provide the Regional Director, within 30 days of the Effective Date, with a written opinion from independent legal counsel, setting forth the following: (i) a statement that counsel has reviewed the terms of each such Commitment or Loan In Process, which shall be

identified in a schedule appended to the written opinion; and (ii) identifying each such Commitment or Loan in Process that in the opinion of counsel constitutes a legally binding obligation of the Association that could be enforced in a court of law by the party to whom the Commitment and Loan in Process is made.

2.6. Investments. The Association shall not make any investments without the prior written notice of non-objection of the Regional Director except for:

- (a) investments that qualify as liquid assets pursuant to 12 C.F.R. §566.1;
- (b) Eurodollar deposits pursuant to 12 C.F.R. §563.9;
- (c) Mortgage backed securities issued by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States, provided that the Association shall not invest in any of such mortgage backed securities which are considered to be high-risk pursuant to Thrift Bulletin No. 12 (such as stripped mortgage-backed securities (interest only securities (IOs), principal only securities (POs), companion tranches, residuals or any other tranches); and
- (d) Mortgage backed securities issued by private entities, provided that: (i) the Association shall not invest in any of such mortgage backed securities which are considered to be high-risk pursuant to Thrift Bulletin No. 12; (ii) such issues are secured by whole loan mortgage collateral; and (iii) such issues have a minimum rating by either Moody's Investor Service or Standard and Poor's of AA or better at the time of acquisition.

2.7. Disposition of Assets. In addition to any existing requirements to obtain the approval or non-objection of the OTS, the FDIC, or any other Federal banking agency for any disposition of assets, the Association shall not dispose of any asset which would result in a reduction in tangible capital of

10% or greater without the prior written notice of non-objection of the Regional Director. Notwithstanding the provisions of this Section 2.7., the disposition of REO shall be governed by the provisions of Section 2.4 with respect to the notice and non-objection requirements.

2.8. Calculation of Tangible Capital. For the purposes of Sections 2.3, 2.4 and 2.7., tangible capital shall be calculated as of the last day of the month of the calendar quarter immediately preceding the date of the proposed transaction.

2.9. Investment in Service Corporations.

(a) As of the Effective Date and continuing thereafter, the Association's aggregate investment in service corporations shall not exceed 3.5% of its total assets as reported in the most recent monthly report to the OTS (Schedule SC-Line 60).

(b) The Association shall review and revise, as necessary, its policies and procedures to ensure that its investments in service corporations are accurately accounted for, addressing the criticisms noted in the OTS Report of Examination. The Association shall review and implement bookkeeping and records policies for each of its service corporations.

(c) In the event that the Association's aggregate investment in service corporations exceeds the limitation specified in Section 2.9(a) solely because of a decrease in the total assets of the Association and, in response to a request by the Association, the OTS has determined, pursuant to applicable statutes and regulations and interpretations thereof, that such excess investment must be divested, the Association shall be permitted, at its option to: (i) develop and submit a plan to the OTS providing for the earliest possible compliance of the Association with the investment limitation specified in Section 2.9(a) or (ii) submit a salvage application to the OTS pursuant to the provisions of 12 C.F.R. §563.38.

2.10. Valuation Allowances. No later than 30 days of the Effective Date, the Association shall review, revise, and implement, as necessary, policies and procedures for general and specific valuation allowances which are consistent with 12 C.F.R. §571.26.

## SECTION 3 - POLICIES AND PROCEDURES

### 3.1. Asset Collection.

(a) No later than 30 days of the Effective Date, the Association shall review, revise, and implement, as necessary an asset collection policy which, at a minimum, requires:

- (i) prompt identification of all loans that are past due and procedures for the treatment of such past due loans;
- (ii) appropriate inspections and/or appraisal reviews when setting and implementing the collection strategy;
- (iii) presentation to management of the status of required filings and payments so that the Association's collateral interests are maintained and protected;
- (iv) thoroughly documented written and verbal contacts with delinquent borrowers; and
- (v) appropriate and prompt referrals to asset workout personnel and/or legal counsel for collection.

(b) The Board of Directors of the Association (the "Board") shall take steps to ensure that management is adhering to the asset collection policy. At a minimum, to the extent it has not already done so, the Board shall: (i) designate a management official responsible for overseeing compliance with the asset collection policy; and (ii) require monthly reports from the management official as to the extent of the Association's compliance (or non-compliance) with the asset collection policy.

(c) No later than 30 days of the Effective Date, the Board shall review, revise, and implement, as necessary, written policies and procedures for modifications, extensions or renewals of troubled assets to ensure that: (i) such modifications, extensions, or renewals are adequately controlled and are reviewed by the Board; and (ii) appropriate valuation allowances are established.

### 3.2. Appraisals.

(a) The Association shall immediately order, and obtain

within a reasonable period of time, appraisals for the properties listed on page 22 of the OTS Examination Report. In addition, the Association shall order, and obtain within a reasonable period of time, new appraisals for: (i) newly acquired REO; and (ii) loans deemed to be insubstance foreclosures.

(b) No later than 30 days of the Effective Date and every month thereafter, the Association shall provide OTS with a report of the results of such appraisals including: (i) the date of each such appraisal; (ii) the market value as determined by such appraisal; and (iii) whether additional specific and/or general valuation reserves are required.

(c) No later than 30 days of the Effective Date, the Association shall review, revise and implement, as necessary, an effective policy regarding its appraisal program consistent with 12 C.F.R. §§563.170, 563.172(a) and 564.1 et seq. The Association shall consider, as a reference in establishing its appraisal policy, the "Appraisal Policy and Procedures Guide," dated November 1990 and written by Gregg A. Hoefer, MAI, Department of the Treasury, Office of Thrift Supervision, Seattle, Washington.

3.3. Loans to One Borrower. No later than 30 days of the Effective Date, the Association shall review, revise and implement, as necessary, a more complete and comprehensive policy and procedures to ensure ongoing compliance with the LTOB requirements of 12 C.F.R. §563.93.

3.4. Internal Loan Review. No later than 30 days of the Effective Date, the Association shall review, revise and implement, as necessary, a comprehensive Internal Loan Review Policy which shall address the criticisms noted on Pages 5, 21 and 22 of the OTS Examination Report, provide accurate and timely information to management, the Board and OTS, and which shall provide that adequate staff exists to carry out the internal loan review function. The Board shall periodically review such policy and procedures to ensure that the internal loan review function is being properly performed.

3.5. Internal Audit Policy and Procedures.

(a) No later than 30 days of the Effective Date, the Association shall review, revise and implement a comprehensive internal audit policy which will enable the Board to effectively monitor the implementation of its policies. The policy shall, at a minimum, include matters of physical and accounting controls in the areas listed in the FHLBB Bulletin 1A-5.

(b) The policies and procedures shall provide that the internal audit function remains independent of management and reports directly to the Board.

(c) The Board shall periodically review such policy and procedures to ensure, to the extent possible, that the internal audit function is being properly performed and to make changes as necessary to reflect changing goals and activities.

3.6. Other Areas. No later than 30 days of the Effective Date, the Board shall review, revise and implement, as necessary, the following policies and procedures, addressing the relevant comments from the OTS Examination Report: Consumer Lending; 1- 4 Family Lending, Construction and Commercial Real Estate Lending and Ethics.

3.7. Approval by the Board. The Board shall indicate that it has reviewed and approved all of the policies and procedures listed in this Section 3 and such review and approval shall be recorded in the Board minutes. Thereafter, such policies and procedures shall be reviewed by the Board on an annual basis, at a minimum.

#### SECTION 4 - FINANCIAL REPORTING

##### 4.1. Books and Records.

(a) The Association shall take all necessary steps to ensure to the extent possible the accuracy of its books and records as required by 12 C.F.R. §563.170(c) and 12 C.F.R. §563.233 for the purpose of, inter alia, providing the OTS with access to a complete and accurate record of its operations. Accurate financial information shall be incorporated in all reports to the Board, and in any and all information supplied to the OTS, including the Association's Thrift Financial Reports.

(b) Specifically, the Board shall take such action as will correct:

- (i) the violations of Section 563.233 of the OTS Regulations, 12 C.F.R. §563.233, regarding the establishment of accurate accounting policies and procedures;
- (ii) the slotting errors and discrepancies on the Thrift Financial Reports; and

- (iii) the errors and discrepancies in the accounting for the Association's investments in service corporations.

4.2. List of Critized Assets. By the 20th day following each quarter, beginning September 30, 1991, management shall submit to OTS a summary of all classified assets as reported on Schedule TA, lines 400, 410, 420 and 430 of the Thrift Financial Report, in the same format as appears on pages A-12.1 through A-13 of the OTS Examination Report. Such classified asset summaries shall include classified assets which have been paid off, disposed of or written off since the previous quarterly submission of the Thrift Financial Report. This report should include: (a) a brief synopsis of each major loan listed; (b) the highlighting of any upgrades or changes in major loan classifications; and (c) for the first submission, the classification data for March 31, 1991 and June 30, 1991.

4.3. Accounting for Insurbance Foreclosures. No later than 30 days of the Effective Date, the Association shall review, revise and implement, as necessary, guidelines for evaluating, identifying and accounting for assets considered insurbance foreclosures.

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## SECTION 5 -- MANAGEMENT

### 5.1. Management Plan.

(a) No later than 30 days from the Effective Date, the Board shall develop a written analysis and assessment of the Association's management and staffing needs which shall include, at a minimum:

- (i) identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Association;
- (ii) identification and establishment of Association committees to provide guidance and oversight to management;
- (iii) evaluation of each Association's officer and senior staff member to determine whether these individuals possess the ability, experience and other qualifications required to perform present

and anticipated duties, including adherence to the Association's policies and procedures and maintenance of the Association in a safe and sound condition; and

- (iv) a plan of action to recruit and hire any additional or replacement personnel with the ability, experience and other qualifications which the Board determines are necessary to fill the Association's deficiencies in senior management positions.

(b) The Board shall approve the written management plan and such approval shall be recorded in the minutes of the Board. Any modification shall become effective when approved by the Board and such approval shall be recorded in the minutes of the Board. The Association shall implement and follow the written management plan and/or any subsequent modification thereto.

#### SECTION 6 -- BOARD REVIEW OF COMPLIANCE WITH THIS ORDER

6.1. Prompt Action. The Board shall take action, as promptly as reasonably possible, to cause the Association to fully comply with this Order.

6.2. Compliance Resolution. Each month, the Board shall adopt a formal resolution (the "Compliance Resolution") resolving that, following a diligent inquiry of relevant information, to the best of its knowledge and belief, during the immediately preceding calendar month, the Association has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall: (i) specify in detail how, if at all, full compliance was found not to exist; and (ii) identify all notices of exemption or other exceptions issued by the Regional Director that were outstanding as of the date of the Compliance Resolution. In connection herewith, the Board may reasonably rely on information and reports supplied by management and by advisors to the Board and/or management.

6.3. Board Minutes. The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (i) the identity of each director voting in favor of its adoption; (ii) the identity of each director voting in opposition to its adoption; and (iii) the identity of each director abstaining from voting thereon.

6.4. Submission of Compliance Resolution. No later than the 10th Business Day of each month, the Association shall provide to the Regional Director a certified true copy of each such Compliance Resolution adopted at the Board meeting of the immediately preceding month. The Board by virtue of the Association's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified, to their best knowledge and belief, to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the meeting of the Board.

6.5. Fiduciary Duty. No member of the Board shall be deemed to have breached his fiduciary duty by complying with the terms of this Order in good faith.

#### SECTION 7 -- DEFINITIONS AND MISCELLANEOUS PROVISIONS

7.1. Incorporation of Stipulation. The Stipulation is made a part hereof and is incorporated herein by this reference.

7.2. Definitions. For all purposes of this Order except as otherwise expressly provided or unless the context otherwise requires: (a) the terms defined in this Order have the meanings assigned to them in this Section 7.2 and include the plural as well as the singular; (b) all accounting terms not otherwise defined have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, except that if such terms are defined in the Rules and Regulations of the OTS, such regulatory definitions shall be controlling; (c) all terms not otherwise defined herein that are defined in the HOLA, the FDIA, FIRREA, the Rules and Regulations of the OTS or its publicly available Bulletins and Advisory Memoranda shall have the meanings assigned to them in such statutes, Rules and Regulations, Bulletins, and Advisory Memoranda; and (d) all technical words or terms not subject to a definition in this Agreement shall have the meanings that accord with the best custom and usage in the thrift and banking industries.

"Advisory Memoranda" refers to inter alia, R Memoranda and T Memoranda issued by the staff (or agents) of the OTS (or its predecessors in interest).

"Bulletins" refers to, inter alia, Regulatory Bulletins, Thrift Bulletins, and PA Bulletins, issued by the staff (or agents) of the OTS (or its predecessors in interest).

"Board Resolution" means a resolution duly adopted by a disinterested majority of the Board present at a duly called and held meeting of the Board (or a Committee thereof) at which a quorum was present.

"Business Day" means any weekday excluding Federal holidays.

"Commercial Loan or Loans" means any loan the proceeds of which are used for a business purpose, and are either secured or unsecured, but shall not include Commercial Real Estate Loans.

"Community Reinvestment Act Area" means the community defined by the Association pursuant to Section 563e.3 of the OTS Regulations, 12 C.F.R. §563e.3.

"Consumer Loans" means loans for personal, family or household purposes, including loans secured by passbooks, home equity lines of credit, second mortgage loans secured by 1-4 family property, home improvement loans, direct automobile loans, student loans, and Visa loans which are part of the Association's Ye\$ retail deposit package.

"Executive Officer" has the meaning assigned to the term "Officer" as set forth in Section 561.35 of the OTS Regulations, 12 C.F.R. § 561.35.

"FDIA" means the Federal Deposit Insurance Act, as amended, 12 U.S.C. §1811 et seq.

"FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.

The words "herein", "hereof", and "hereunder" and other words of similar import refer to this Order as a whole and not to any particular Section, or other subdivision, unless the context otherwise requires.

"Multi-Family Residential Real Estate Loan or Loans" means any loan(s), the proceeds of which are used to acquire, construct, improve, and/or rehabilitate multi-family (more than 1-4 family) residential property.

"Non-Performing" means any loan listed on Schedule PD of the Thrift Financial Report.

