UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2015-CFPB-0011

In the Matter of: **GUARANTEE MORTGAGE CORPORATION**	**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed compensation paid to mortgage loan originators (Loan Originators, as defined below) by Guarantee Mortgage Corporation (Respondent, as defined below) and has identified the following law violations: Respondent compensated Loan Originators based on the terms of mortgage loans they had originated in violation of the Loan Originator Compensation (LO Comp) Rule, 12 C.F.R. § 226.36(d)(1)(i)(2011) (recodified as 12 C.F.R. § 1026.36(d)(1)(i) (2011)), and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5536(a)(1)(A). Under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I
Jurisdiction

1. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, and section 108 of the Truth in Lending Act (TILA), 15 U.S.C. § 1607.

II
Stipulation

2. Respondent has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated May 19, 2015 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau's jurisdiction over Respondent and the subject matter of this action.

III
Definitions

3. The following definitions apply to this Consent Order:

   a. "Board" means Respondent's duly-elected and acting Board of Directors.

   b. "Effective Date" means the date on which the Consent Order is issued.

   c. "Enforcement Director" means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegee.

d. "Loan Originator" means a "loan originator" – as defined in the LO Comp Rule, 12 C.F.R. § 1026.36(a)(1) (2011) (revised 2014) – who was an employee of Respondent.

e. "Producing Branch Manager" means a Loan Originator who managed one of Respondent's branch offices.

f. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.

g. "Relevant Period" includes the period from April 1, 2011 through August 31, 2012.

h. "Respondent" means Guarantee Mortgage Corporation, including GM West Funding, and its successors and assigns.

i. "Retail Loans" mean loans funded through Respondent's warehouse line of credit.

IV
Bureau Findings and Conclusions

The Bureau finds the following:

4. During the Relevant Period, Respondent was an independently owned mortgage-brokerage firm and mortgage banker headquartered in San Rafael, California that operated about 10 branches in the San Francisco Bay Area. Respondent is no longer a going concern.

5. During the Relevant Period, Respondent was a "person" under the LO Comp Rule, which prohibits any person, including a creditor, from paying compensation to a loan originator if the amount of the payment is based on a loan transaction's terms or conditions, including the loan's interest rate. 12 C.F.R. § 1026.36(d)(1)(i) (2011) (revised 2014); Official Interpretation §1026.36(d)(1)(i).

6. During the Relevant period, Respondent was also a "covered person" under section 1002(6) of the CFPA because it offered or provided "consumer financial product[s] or service[s]," 12 U.S.C. § 5481(6) – that is, it offered or provided mortgage loans to consumers primarily for personal, family, or household purposes. *See* 12 U.S.C. §§ 5481(5)(A), 15(A)(i).

7. During the Relevant Period, Respondent paid monthly fees to marketing-services entities that were associated with each of its branch offices. Respondent set the fees based on the profitability of the associated branch. The owners of the marketing-services entities then drew the monthly fees as additional compensation. Marketing-services-entity owners included Producing Branch Managers as well as, in some instances, one or more other Loan Originators within the branch.

8. Under agreements with the marketing-services entities, the fees were not supposed to include income from loans originated by the owners of the marketing-services entities. But as a result of Respondent's accounting methods during the Relevant Period – specifically, Respondent's improper allocation of expenses in branch income statements – those fees did include

income from originations by marketing-services-entity owners, including their originations of Retail Loans. Retail Loans typically generated more revenue the greater the rate of interest above par. Consequently, owners of marketing-services entities received compensation based on the terms of loans they had originated.

9. Because Respondent paid Loan Originators compensation that included amounts that varied based on the terms of loans they had originated, Respondent violated the LO Comp Rule. 12 C.F.R. § 1026.36(d)(1)(i) (2011) (revised 2014).

10. The CFPA makes it unlawful for a covered person to "commit any act or omission in violation of a Federal consumer financial law." 12 U.S.C. § 5536(a)(1)(A). Because Respondent was a covered person that violated the LO Comp Rule (a "Federal consumer financial law"), Respondent also violated the CFPA.

ORDER

V

Conduct Provisions

IT IS ORDERED, under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, that:

11. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, are permanently enjoined from paying compensation to a Loan Originator in

violation of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq*., and its implementing regulations.

VI
Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

12. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of $228,000 to the Bureau.

13. To the extent that Respondent lacks the financial resources to pay the full civil money penalty, Respondent must obtain contributions from Respondent's individual owners sufficient to pay the full penalty.

14. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

15. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

16. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:

    a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or

b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.

17. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

18. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.

19. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

20. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

VII
Reporting Requirements

IT IS FURTHER ORDERED that:

21. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner. Respondent has indicated that it is in the process of dissolution. Providing the Bureau with a copy of the certificate of dissolution filed with the California Secretary of State within 30 days of such filing shall satisfy Respondent's reporting obligation relating to its wind up and dissolution.

22. Within 7 days of the Effective Date, Respondent must:

    a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent;

    b. Identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and

c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.

23. Respondent must report any change in the information required to be submitted under Paragraph 22 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

VIII
Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

24. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section VII and any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

25. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, as required in paragraph 24, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

IX
Recordkeeping

IT IS FURTHER ORDERED that

26. Respondent must create, for at least 5 years from the Effective Date, all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.

27. Respondent must retain the documents identified in Paragraph 27 for at least 5 years.

28. Respondent must make the documents identified in Paragraph 27 available to the Bureau upon the Bureau's request.

X
Notices

IT IS FURTHER ORDERED that:

29. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* Guarantee Mortgage Corporation, File No. 2015-CFPB-0011," and send them either:

    a. By overnight courier (not the U.S. Postal Service), as follows:

    Assistant Director for Enforcement
    Consumer Financial Protection Bureau
    ATTENTION: Office of Enforcement
    1625 Eye Street, N.W.
    Washington D.C. 20006; or

    b. By first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XI
Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Respondent's compliance with this Consent Order:

30. Within 14 days of receipt of a written request from the Bureau, Respondent must submit the requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

31. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

32. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XII
Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

33. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

34. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XIII
Administrative Provisions

35. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 37.

36. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of

violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

37. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

38. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

39. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

40. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12

U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

41. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

42. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 3rd day of June, 2015.

Richard Cordray

Richard Cordray
Director
Consumer Financial Protection Bureau