

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

CONSUMER FINANCIAL PROTECTION BUREAU)
and UNITED STATES OF AMERICA,)

Plaintiffs,)

v.)

NATIONAL CITY BANK,)
through its Successor in Interest,)

Defendant.)

CIVIL ACTION NO.

CONSENT ORDER

I. INTRODUCTION

This Consent Order is submitted jointly by the parties for the approval of and entry by the court, simultaneously with the filing of the Complaint of the Consumer Financial Protection Bureau and the United States (collectively, "Plaintiffs") in this matter. This Consent Order resolves the claims in the Plaintiffs' Complaint that, during and between 2002 and 2008, National City Bank engaged in a pattern or practice of discrimination on the basis of race and national origin in residential mortgage lending in violation of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, and the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3619. On December 31, 2008, National City Bank was acquired by The PNC Financial Services Group, Inc. and in 2009 was merged with and into PNC Bank, National Association ("Successor"), which is the successor-in-interest to National City Bank.

The Plaintiffs' allegations against National City Bank relate solely to loans originated by National City Bank prior to the acquisition of National City Bank by the parent holding company of Successor. There has been no factual finding or adjudication with respect to any matter alleged by the Plaintiffs. Successor neither admits nor denies Plaintiffs' allegations. Since PNC acquired National City Bank, PNC no longer utilizes third-party mortgage brokers to submit loans through a wholesale channel and has implemented revised policies and procedures related to its retail mortgage channel. PNC does not use National City Bank's residential mortgage origination policies and procedures. The parties have entered into the Consent Order to avoid the risks, expense, and burdens of litigation and to resolve voluntarily the claims in the Plaintiffs' Complaint.

II. BACKGROUND

In 2012, the Plaintiffs opened a joint investigation of National City Bank's mortgage origination pricing practices from 2002-2009, and Successor's mortgage origination pricing practices from 2009-2010. The Complaint alleges that during and between 2002 and 2008, National City Bank engaged in a pattern or practice of discrimination on the basis of race and national origin in the pricing of residential mortgage loans originated through retail and wholesale channels in violation of both the ECOA and the FHA.

Specifically, the Plaintiffs allege that: 1) National City Bank's business policies and practices allowed its employees who originated mortgage loans through its retail channel during and between 2002 and 2008, and third-party mortgage brokers that submitted loans through its wholesale channel during and between 2003 and 2008, to vary a loan's interest rate, fees, and other costs associated with the loan from the price initially set based on the borrower's objective credit-related factors; 2) National City Bank's compensation and incentive policies encouraged

its employees who originated loans through its retail channel, and third-party mortgage brokers who originated loans through its wholesale channel, to charge higher interest rates, fees, and other costs; and 3) National City Bank failed to implement or maintain adequate internal controls to identify and prevent discrimination prohibited by the ECOA and the FHA from occurring. The Complaint alleges that these policies and practices resulted in African-American and Hispanic borrowers paying higher interest rates, fees, and other costs than similarly-situated non-Hispanic White borrowers that could not be explained fully by factors unrelated to race and nation origin, in violation of the ECOA and the FHA.

III. REMEDIAL ORDER

1. The Effective Date of this Consent Order will be the date on which it is approved and entered by the Court.

2. Within seven (7) days of the Effective Date of this Consent Order, Successor will establish an interest-bearing qualified settlement fund in the total amount of thirty-five million dollars (\$35,000,000.00) to compensate affected borrowers for monetary damages, equitable relief, and other damages that they may have suffered as a result of National City Bank's alleged violations of the ECOA and the FHA (the "Settlement Fund"). Title to this account shall specify that it is "for the benefit of allegedly affected borrowers pursuant to the Order of the Court in *Consumer Financial Protection Bureau and United States v. National City Bank through its Successor in Interest* filed on _____." Successor shall provide written verification of the deposit to the Plaintiffs within five (5) days of depositing the funds described in this paragraph. Any interest that accrues will become part of the Settlement Fund and will be utilized and disposed of as set forth herein.

3. Within thirty (30) days of the Effective Date of the Consent Order, Successor shall identify to Plaintiffs a Settlement Administrator ("Administrator") to conduct the activities

set forth in Paragraphs 4 through 15 and Paragraph 17. The selection of the Administrator and the terms of the Administrator's contract related to the Administrator's duties pursuant to the Consent Order shall be subject to the approval of the Plaintiffs. Within thirty (30) days of the approval of the Administrator by Plaintiffs, Successor shall enter into a contract retaining the Administrator to conduct the activities set forth in Paragraphs 4 through 15 and Paragraph 17. Successor shall bear all costs and expenses of the Administrator for conducting the activities set forth in Paragraphs 3 through 15 and Paragraph 17. Successor's contract with the Administrator shall require the Administrator to comply with the provisions of the Consent Order as applicable to the Administrator.¹ The Administrator's contract shall require the Administrator to work cooperatively with the Plaintiffs in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the Plaintiffs. The Administrator's contract shall require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator.

4. The Administrator's contract shall require the Administrator, as part of its operations, to establish cost-free means for affected borrowers to contact it, including an email address, an internet site, a toll-free telephone number, and means for persons with disabilities to communicate effectively, including TTY. The Administrator's contract shall require the Administrator to provide live English and Spanish-speaking operators to speak to individual borrowers who call the toll-free telephone number during business hours, 8:00 am ET to 5:00 pm PT, and request a live operator. In addition, the Administrator's contract shall require the

¹ In the event that the Plaintiffs have reason to believe that the Administrator is not materially complying with the terms of its contract with Successor, the Plaintiffs and Successor shall meet and confer for the purpose of mutually agreeing upon a course of action to effect the Administrator's material compliance with its contract with Successor. In the event that the Plaintiffs and Successor are unable to agree upon a course of action to effect the Administrator's material compliance with its contract with the Successor, the parties shall present the matter to the Court.

Administrator to provide Spanish language translations for written (including email and telephone script) communications with affected borrowers.

5. Within thirty (30) days of the Effective Date of the Consent Order, the Plaintiffs shall provide to the Administrator and Successor a list of loans originated to African-American and Hispanic borrowers allegedly affected by the conduct set forth in the Complaint.

6. Within thirty (30) days after the date the Plaintiffs provide the list of loans referenced in Paragraph 5, Successor will provide to Plaintiffs and the Administrator the name, property address, mailing address, and Social Security number for the primary borrower and each co-borrower (if any) on each listed loan. Such information and data shall be used by the Plaintiffs and the Administrator only for the purposes of enforcing and implementing the Consent Order. Successor shall supply the requested information that is within its control, or the control of any affiliated entity of Successor. To the extent that the requested data is not within the control of those parties, Successor shall supply any data that is within the control of those parties that identifies other entities that may have the requested data.

7. Within sixty (60) days after the date the Plaintiffs receive the data required to be provided by Paragraph 6, the Plaintiffs shall provide the Administrator with a list of borrowers eligible to receive a monetary award from the Settlement Fund (“Identified Borrowers”) and the initial estimate of the amount each Identified Borrower will receive from the Settlement Fund if all Identified Borrowers are located. No individual may request that the Court, the Plaintiffs, the Successor, or the Administrator review the selection of Identified Borrowers or the amount to be received.

8. Throughout the term of this Consent Order the Plaintiffs or Administrator may request from Successor data they do not already have and that the Plaintiffs or Administrator

reasonably believe will assist in identifying affected borrowers and determining any monetary damages, equitable relief, and other damages. Such data shall be used by the Plaintiffs or Administrator only for the law enforcement purposes of implementing this Consent Order. Within fifteen (15) business days of any such request under this Paragraph, Successor shall supply to the requestor the requested data that is within its custody or control, or the custody or control of any current or former affiliated entity of Successor or National City Bank.

9. The Administrator's contract shall require the Administrator to adopt effective methods, as directed by the Plaintiffs, to confirm the identities of Identified Borrowers and provide to the Plaintiffs a list of Identified Borrowers whose identities have been confirmed within one hundred twenty (120) days from the date the Plaintiffs provide the information described in Paragraph 7.

10. Within sixty (60) days after the date the Administrator provides to Plaintiffs the list of Identified Borrowers required by Paragraph 9, the Plaintiffs shall provide to the Administrator a list containing the final payment amount for each Identified Borrower on the list. Payment amounts are to be paid on a per-loan basis; if there is more than one Identified Borrower listed on the loan, they will share the compensation equally. The parties agree that the total amount of the Settlement Fund shall not be altered based on the number of Identified Borrowers whose identities are confirmed pursuant to Paragraph 9. No individual may request a review by the Court, the Plaintiffs, Successor or the Administrator of the final payment amounts.

11. The Administrator's contract shall require the Administrator to deliver payment to each Identified Borrower in the amount determined by the Plaintiffs as described in Paragraph 10, within ten (10) days of its receipt. Given the specific facts and circumstances related to this action, including, but not limited to, the age of the loans, the result of prior private litigation, the

legacy nature of these loans that were originated by a prior entity whose loan program is no longer operative, and the joint nature of this action between the two federal agencies, the Plaintiffs have agreed to require each Identified Borrower to effectuate a mutually agreeable release as a condition of payment under the Settlement Fund that will release all claims of every type accruing prior to the Effective Date related to the allegations in the Complaint which this Consent Order resolves that the Identified Borrower may have against National City Bank, PNC Bank, N.A., all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors, or assigns.

12. The Administrator's contract shall require the Administrator to set forth deadlines, subject to approval of the Plaintiffs, so that the final payments described in Paragraph 10 are distributed and checks are presented for payment or become void, prior to the date that is 24 months from the date the Plaintiffs provide the list of final payment amounts to the Administrator in accordance with Paragraph 10.

13. The total amount paid by Successor to the Identified Borrowers collectively shall not exceed the amount of the Settlement Fund, including accrued interest.

14. Successor will not be entitled to a set-off, or any other reduction, of the amount of final payments to Identified Borrowers because of any debts owed by the Identified Borrowers.

15. All money not distributed to Identified Borrowers from the Settlement Fund, including accrued interest, shall be distributed by the Administrator to one or more organizations that provide services including credit and housing counseling (including assistance in obtaining loan modification and preventing foreclosure), legal representation of borrowers seeking to obtain a loan modification or to prevent foreclosure, financial literacy, and other related

programs, targeted at African-American and Hispanic potential and former homeowners (“Qualified Organization”). Before selecting the Qualified Organization(s), Successor will 1) obtain proposals from the Organization(s) on how the funds will be used consistent with the above-stated purpose, and 2) submit selected proposals from the Organization(s), and the proposed amount of funds each Organization would receive, to the Plaintiffs within thirty (30) days of the date that the Administrator completes the delivery of the payments under Paragraph 11. Successor shall consult with and obtain the non-objection of the Plaintiffs to the proposals submitted within thirty (30) days of Successor’s submission. The Plaintiffs and Successor may request modification of an Organization’s proposal before approving the Organization(s). Qualified Organization(s) must not be affiliated with Successor, Successor’s parent, or any affiliated entity of Successor’s parent.

16. The parties shall obtain the Court’s approval of the selection of the Qualified Organizations and the amount to be distributed to each Qualified Organization prior to distribution as provided by Paragraph 15. Within fifteen (15) days of the Plaintiffs’ non-objection to the Qualified Organizations, the parties shall move the Court to order the distribution of the funds. The parties shall provide the Court with information regarding how the Qualified Organizations meet the requirements set forth in Paragraph 15.

17. The Administrator shall require each Qualified Organization to submit to the Administrator a report detailing that funds are utilized for the purposes identified in Paragraph 15 within one year after the funds are distributed and every year thereafter until the funds are exhausted. For any Qualified Organization that does not provide such a report, the Administrator shall require that the funds be returned to the Administrator for redistribution to the other organization(s) approved to receive funds.

IV. RECORD KEEPING AND REPORTING REQUIREMENTS

18. For the duration of the Consent Order, Successor shall retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The Plaintiffs will have the right to review and copy such records upon request.

19. Successor will submit semi-annual reports to the Plaintiffs on its progress in completing the requirements of the Consent Order. Each such report will provide a complete account of Successor's actions to comply with each requirement of the Consent Order during the previous six months, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component fell short of meeting its goal for the previous six months, and any recommendations for additional actions to achieve the goals of the Consent Order. Successor shall submit its first report no later than 180 days after the Effective Date of the Consent Order, and every 180 days thereafter for so long as the Consent Order is in effect.

V. ADMINISTRATION

20. The Consent Order will terminate three months after funds have been distributed in accordance with Paragraph 15, if applicable, of the Consent Order. Notwithstanding the above, the Consent Order may be extended further upon motion of the Plaintiffs to the Court, for good cause shown.

21. Any time limits for performance fixed by the Consent Order may be extended by mutual written agreement of the parties without Court order. Additionally, Paragraphs 3-17 herein can be modified by agreement of the parties and without further Court approval. Other modifications to the Consent Order may be made only upon approval of the Court, upon motion by either Successor or the Plaintiffs. The parties recognize that there may be changes in relevant

and material factual circumstances during the duration of the Consent Order which may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to the Consent Order resulting therefrom.

22. The Consent Order will be binding on Successor, including its officers, employees, agents, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event Successor seeks to transfer or assign all or part of its residential mortgage operations,² and the successor or assignee intends on carrying on the same or similar use, as a condition of sale, Successor will obtain the written accession of the successor or assignee to any obligations remaining under the Consent Order for its remaining term.

23. Nothing in the Consent Order will excuse Successor's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Successor that imposes additional obligations on Successor.

24. The parties agree that, as of the Effective Date of the Consent Order, litigation is not "reasonably foreseeable" concerning the matters described in the Consent Order. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Consent Order, the party is no longer required to maintain such a litigation hold, with the exception of documents, electronically-stored information, or other things relating to residential mortgage loans originated by National City Bank during and between January 1, 2002, and December 31, 2008.

² For purposes of this paragraph, the requirements relating to the transfer or assignment of "residential mortgage operations" do not include the transfer or assignment of portions of Successor's portfolio of loans, accounts, receivables or servicing rights associated with loans to an independent third party entity.

25. In the event that any disputes arise about the interpretation of or compliance with the terms of the Consent Order, the parties will endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. If the Plaintiffs believe that Successor has violated any provision of the Consent Order, it will provide Successor written notice thereof and allow thirty (30) days to resolve the alleged violation before presenting the matter to this Court. In the event of either a failure by Successor to perform in a timely manner any act required by the Consent Order or an act by Successor in violation of any provision hereof, the Plaintiffs may move this Court to impose any remedy authorized by law or equity.

26. Successor's compliance with this Consent Order shall fully and finally resolve all claims related to the allegations of the Complaint and the subject matter of the Plaintiffs' investigation, including under the ECOA and the FHA, that the Plaintiffs may have against National City Bank or Successor relating to discrimination against African-American and Hispanic borrowers based on racial or national origin disparities in pricing of residential mortgage loans during and between 2002 and 2010, including without limitation all claims for monetary damages, equitable relief, other damages, and penalties arising from those claims, as well as any claims under any other legal theory based on the same allegations of discriminatory conduct addressed in the Complaint.

27. This Consent Order does not release claims for practices not addressed in the Complaint's allegations, or that were not within the subject matter of Plaintiffs' investigation, including claims that may be held or are currently under investigation by any federal agency, or any claims that may be pursued for actions that may be taken by the appropriate Federal Banking Agency ("FBA"), as defined in 12 U.S.C. § 1813(q), against Successor, any of its affiliated

entities, and/or any institution-affiliated party of Successor, as defined in 12 U.S.C. § 1813(u), pursuant to 12 U.S.C. § 1818 or any other statute or regulation.

28. Each party to the Consent Order will bear its own costs and attorneys' fees associated with this litigation.

29. The Court will retain jurisdiction for the duration of the Consent Order for purposes of construction, modification, and enforcement of the Consent Order, after which time the case will be dismissed with prejudice.

IT IS DONE AND ORDERED this ____ day of _____, 2013

UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of the Agreement:

On behalf of the Plaintiffs:

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DATED: December 23, 2013

On behalf of Defendant National City Bank through its Successor-in-Interest:



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DATED December 20, 2013