

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

File No. 2015-CFPB-0005

In the Matter of:

American Preferred Lending, Inc.

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the mortgage origination advertising activities of American Preferred Lending, Inc. (Respondent, as defined below) and has identified the following law violations: making material misrepresentations in commercial communications that improperly suggested that the Respondent was, or was affiliated with, a United States government entity, and making material misrepresentations that the Respondent's advertised mortgage credit products were endorsed, sponsored by, or affiliated with a government program, all in violation of Regulation N, 12 C.F.R. § 1014.3(n), and the deceptive acts and practices provisions of Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). 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 626 of the Omnibus Appropriations Act of 2009 (as amended by section 1097 of the CFPA), 12 U.S.C. § 5538.

II
Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated February 6, 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 and 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/her delegee.
- d. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- e. “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.
- f. “Relevant Period” includes the period from July 21, 2011 to February 22, 2013.
- g. “Respondent” means American Preferred Lending, Inc., and its successors and assigns.
- h. “Term” means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

IV

Bureau Findings and Conclusions

The Bureau finds the following:

- 4. Respondent is a privately-held corporation formed and operated under California law.
- 5. Respondent is licensed as a mortgage lender and mortgage broker in California, and as a mortgage loan originator in Florida.

6. During the Relevant Period, Respondent offered, provided, and brokered residential mortgage loans.
7. Residential mortgage loans are “consumer financial products or services” pursuant to 12 U.S.C. §§ 5481(5), (15)(A)(i).
8. Respondent is therefore a “covered person” as that term is defined by 12 U.S.C. § 5481(6).
9. During the Relevant Period, Respondent has advertised mortgage credit products to consumers through direct mail. These advertisements constitute “commercial communications” regarding “mortgage credit products” as those terms are defined by Regulation N, 12 C.F.R. § 1014.2.
10. During the Relevant Period, Respondent disseminated direct-mail mortgage loan advertisements that improperly suggested that Respondent was affiliated with a governmental agency, and misrepresented that the advertised mortgage credit products were endorsed, sponsored by, or affiliated with a government program.
11. The direct mail pieces appeared as if they were United States government notices.
12. The overall format of the advertisements, including the use of plain text in labeled boxes and the title “Payment Reduction Notice,” evoked a government form.
13. The advertisements obscured that they were from Respondent.
14. The envelopes included a reference to federal law but did not include a return address, and on the primary page of the advertisement Respondent’s name appeared only in the small print disclosures.

15. Many of the advertisements Respondent disseminated during the Relevant Period contained the web address www.FHAdept.us.
16. Many of the advertisements Respondent disseminated during the Relevant Period also contained the FHA Approved Lending Institution logo, which is a version of the United States Department of Housing and Urban Development (HUD) circular logo with the words “FEDERAL HOUSING COMMISSIONER APPROVED LENDING INSTIUTION” around the exterior.
17. In contravention of the requirements issued to FHA lenders by the United States Department of Housing and Urban Development in HUD Mortgagee Letter 2011-17 (April 15, 2011), the advertisements did not emphasize the business name of the Respondent, and the FHA Approved Lending Institution logo was displayed in a manner that created the false impression that the advertisements were an official government form, notice, or document, or otherwise conveyed the false impression that the advertisements were authored, approved, or endorsed by the government.
18. In the context of an advertisement that appeared as if it was a United States government notice, the web address www.FHAdept.us and the FHA Approved Lending Institution logo also connote government affiliations.
19. Respondent disseminated over 100,000 advertisements that referenced www.FHAdept.us and included the FHA Approved Lending Institution logo during the Relevant Period.
20. Regulation N prohibits any person from making “any material misrepresentations, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including

but not limited to misrepresentations” that “the provider is, or is affiliated with, any governmental entity,” 12 C.F.R. § 1014.3(n)(1), or that the product “is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program.” 12 C.F.R. § 1014.3(n)(2).

21. Section 1036(a)(1)(B) of the CFPA prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).
22. As described in Paragraphs 10 to 19, in connection with the advertising, marketing, promoting, offering for sale, or sale of mortgage credit products, in numerous instances, Respondent has represented, expressly or impliedly, that Respondent was affiliated with the United States government, and that its mortgage credit products were endorsed, sponsored by, or affiliated with a government program.
23. The Respondent is not, and is not affiliated with, the United States government, and its mortgage credit products, even if insured by the FHA, are not otherwise endorsed, sponsored by, or affiliated with a government program.
24. Thus, Respondent’s representations, as described in Paragraphs 10 to 19 constitute material misrepresentations regarding the term of a mortgage credit product in violation of 12 C.F.R. §§ 1014.3(n)(1), (2).
25. Further, Respondent’s representations, as described in Paragraphs 10 to 19 constitute deceptive acts or practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

26. Respondent lacks the financial resources to pay a civil money penalty in excess of the one imposed herein, and it is expected that Respondent's individual owners will contribute the sums necessary to pay the penalty imposed.

ORDER

V

Conduct Provisions

IT IS ORDERED, under sections 1053 and 1055 of the CFPA, that:

27. Respondent and its officers, agents, servants, and employees who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate, including by taking reasonable measures to ensure that its service providers and other agents do not violate, Regulation N, 12 C.F.R. part 1014, and sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B), including as follows:
- a. Respondent, and its officers, agents, servants and employees who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or sale of mortgage credit products, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:
 - i. their own identity or the identity of the source of their advertisements, including that the advertisements are from the United States government;
 - ii. the nature of the Respondent's relationship with the United States government or any government program; or
 - iii. the relationship between the mortgage credit product and the United States government or any government program.

VI

Compliance Plan

IT IS FURTHER ORDERED that:

28. Within 30 days of the Effective Date, Respondent must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's mortgage credit product advertisements comply with all applicable federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:
 - a. Detailed steps for addressing each action required by this Consent Order;
and
 - b. Specific timeframes and deadlines for implementation of the steps described above.
29. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the Enforcement Director directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 30 days of the receipt of that direction.
30. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

VII
Role of the Board

IT IS FURTHER ORDERED that:

31. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
32. Although this Consent Order requires the Respondent to submit certain documents for the review or non-objection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with Federal consumer financial law and this Consent Order.
33. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
 - a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
 - b. Require timely reporting by management to the Board on the status of compliance obligations; and
 - c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

VIII

Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

34. 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 \$85,000 to the Bureau.
35. Within 10 days of the Effective Date, Respondent must pay \$35,000 of the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
36. Within 40 days of the Effective Date, Respondent must pay an additional \$35,000 of the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
37. Within 70 days of the Effective Date, Respondent must pay the remaining \$15,000 of the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
38. 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).
39. 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. This subparagraph does not prohibit individual owners of Respondent from providing additional funds to Respondent that may be used to satisfy Respondent's civil money penalty obligation.
40. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.
41. 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.
42. 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.

43. 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.
44. 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.
45. Under section 604(a)(I) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning the Respondent to the Bureau, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

IX Reporting Requirements

IT IS FURTHER ORDERED that:

46. Respondent must notify the Bureau of any development that is likely to 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.

47. Within 7 days of the Effective Date, Respondent must 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.
48. Respondent must report any change in the information required to be submitted under Paragraph 47 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
49. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, which, at a minimum:
 - a. Describes in detail the manner and form in which Respondent has complied with this Order; and
 - b. Attaches a copy of each Order Acknowledgment obtained under Section X, unless previously submitted to the Bureau.
50. After the one-year period, Respondent must submit to the Enforcement Director additional Compliance Reports within 14 days of receiving a written request from the Bureau.

X

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

51. Within 7 days of the Effective Date, Respondent must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
52. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
53. 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 IX, 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.
54. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, 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.

XI
Recordkeeping

IT IS FURTHER ORDERED that

55. Respondent must create, for at least 5 years from the Effective Date, the following business records:
 - a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
 - b. Copies of all advertisements, including any such materials used by a third party on behalf of Respondent.
 - c. Records showing, for each service provider providing services related to direct mail marketing, the name of a point of contact, and that person's telephone number; email, physical, and postal address; job title or position; dates of service; and, if applicable, the reason for termination.
56. Respondent must retain the documents identified in Paragraph 55 for at least 5 years.
57. Respondent must make the documents identified in Paragraph 55 available to the Bureau upon the Bureau's request.

XII
Notices

IT IS FURTHER ORDERED that:

58. 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* American Preferred Lending, Inc., File No. 2015-CFPB-0005,” 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

XIII

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

59. Respondent will promptly respond in full to any future information request from the Bureau related to matters described in this Order.

XIV

Compliance Monitoring

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

60. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional compliance reports or other requested information

regarding Respondent's mortgage credit product advertisements, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

61. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent and involved in Respondent's mortgage credit product advertisements who has agreed to such an interview. The person interviewed may have counsel present.
62. Nothing in this Consent Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

XV

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

63. 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.
64. The Enforcement Director may, in his/her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he/she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XVI

Administrative Provisions

65. 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 63.
66. 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.
67. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPB, 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.
68. 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.

69. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
70. 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.
71. 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.
72. 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 10th day of February, 2015.



Richard Cordray
Director
Consumer Financial Protection Bureau