

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING

File No. 2024-CFPB-0008

In the Matter of:

NEW DAY FINANCIAL, LLC

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the mortgage refinance sales and origination practices of New Day Financial, LLC, a national mortgage originator (NewDay or Respondent, as defined below), and has identified the following violations of law: deceptive acts or practices under §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536, for misrepresenting payment terms of certain VA cash-out refinance mortgage loans originated by NewDay in the borrower net benefit worksheets required in three states at closing. Under §§ 1053 and 1055 of the Consumer Financial Protection Act of 2010 (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 §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565.

II.

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated August 27, 2024 (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 §§ 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 as stated herein, and 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. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
 - b. “Executive Officers” means Respondent’s Chief Executive or its equivalent; Chief Operation Officer or its equivalent; Chief Risk Officer or its equivalent; Chief Compliance Officer or its equivalent; any other chief officer of Respondent; and any person with authority to control Respondent.
 - c. “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.
 - d. “Respondent” or “NewDay” means New Day Financial, LLC, and its successors and assigns.
 - e. “Supervision Director” means the Assistant Director of the Office of Supervision Policy for the Consumer Financial Protection Bureau, or their delegate.

IV.

Bureau Findings and Conclusions

The Bureau finds the following:

4. New Day Financial, LLC is a non-bank direct mortgage originator headquartered in West Palm Beach, Florida, that specializes in offering mortgage loans guaranteed by the United States Department of Veterans Affairs (VA) in 44 states and the District of Columbia.
5. Respondent is a “covered person” under the CFPA, 12 U.S.C. § 5481(6), because it offers and provides residential-mortgage loans, which means it “engages in offering or providing a consumer financial product or service.”
6. Since at least January 1, 2015, NewDay has provided VA cash-out refinance loans to consumers that include veterans and active-duty members of the armed forces, many of whom had lower than average credit scores and carry substantial consumer debt.
7. NewDay offered certain consumers VA-guaranteed cash-out refinances of their home mortgages. The VA cash-out home loan benefit program authorizes loans to be made for up to 100% of the home’s value. NewDay customers who qualified for VA cash-out loans were given the option to use the extra cash to pay off consumer debts, such as credit card debt and personal loans.

8. In promoting the monetary benefits of VA cash-out refinance loans, NewDay regularly emphasized a borrower's new estimated monthly mortgage payment amount both in the company's direct mail advertisements and on phone calls with potential borrowers.

**Findings and Conclusions as to Respondent's
Misrepresentations About its Cash-Out Refinance Loans**

9. Certain states in which NewDay offered its cash-out refinances required a lender to complete a borrower "net benefit" analysis worksheet (Net Benefit Worksheet) showing the financial benefit of a refinance to a borrower.
10. Some states required consumers to sign a version of the Net Benefit Worksheet during mortgage closings.
11. Net Benefit Worksheets that NewDay provided to borrowers in North Carolina and Maine up through 2020, and Minnesota up through 2018, misstated how a consumer's "previous" monthly mortgage payment would compare to a "new" monthly mortgage payment after refinancing with NewDay.
12. Specifically, in the Net Benefit Worksheets that NewDay completed in these three states, the company included a side-by-side comparison of a new monthly mortgage payment after a NewDay cash-out refinance that included only principal and interest (PI) and omitted taxes and insurance with a

previous monthly mortgage payment that included principal, interest, taxes, and insurance (PITI).

13. Although consumers may have received several other federally mandated disclosure documents with accurate cost information, NewDay omitted taxes and insurance payments from the new monthly payment calculation in the Net Benefit Worksheets, which made its cash-out refinance loans appear less expensive relative to consumers' original mortgages on those worksheets when they were often more expensive.
14. Unlike the Net Benefit Worksheets required in other states, the Net Benefit Worksheets required by North Carolina, Maine, and Minnesota did not include blanks that specifically required the company to compare PITI to PITI and PI to PI, but instead included boxes comparing only a "previous payment amount" and a "new loan payment amount."
15. NewDay generated at least 3,000 cash-out refinances in North Carolina and Maine through 2020 and Minnesota through 2018, most of which included Net Benefit Worksheets comparing the nonequivalent monthly mortgage payment amounts.
16. Section 1036(a)(1)(B) of the CFPB prohibits covered persons from engaging in deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is deceptive if there is a representation, omission, act, or practice that

misleads or is likely to mislead a consumer; the consumer's interpretation is reasonable under the circumstances; and the representation, omission, act, or practice is material.

17. Respondent's representations to consumers, which misrepresented payment terms in state-required borrower Net Benefit Worksheets as described in Paragraphs 4 through 16, constitute deceptive acts or practices in violation of §§ 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

V.

Conduct Provisions

Prohibited Conduct

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

18. Respondent and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage loan product, including purchase mortgage loans and refinance mortgage loans, may not violate §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, and are prohibited from:

- a. Misrepresenting, expressly or impliedly:
 - i. the monthly payment amount of any mortgage loan product, including by comparing monthly payment amounts that do not contain identical underlying components (e.g., principal, interest, taxes, and insurance); and
 - ii. any other fact material to consumers concerning a mortgage loan product, such as the costs, benefits, or any material restrictions, limitations, or conditions of the mortgage loan product, or any material aspect of its performance, efficacy, nature, or central characteristics.

VI.

Compliance Plan

IT IS FURTHER ORDERED that:

19. Within 30 days of the Effective Date, Respondent must create and implement a comprehensive compliance plan designed to ensure that Respondent's mortgage lending activities comply with all applicable laws that the Bureau enforces, including 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;
- b. A mechanism to ensure that the Executive Officers are kept apprised of the status of each action required by this Consent Order; and
- c. Specific timeframes and deadlines for implementation of the steps described above.

Respondent will provide the Compliance Plan to the Bureau upon request.

VII.

Role of the Executive Officers

IT IS FURTHER ORDERED that:

20. Respondent's Executive Officers have the ultimate responsibility for ensuring that Respondent complies with this Consent Order.
21. NewDay's Executive Officers must review all plans and reports required by this Consent Order, and any submissions to the Bureau prior to such submission.
22. One year after the Effective Date, Respondent must submit to the Supervision Director an accurate written compliance progress report (Compliance Report) that has been approved by Respondent's Executive Officers, the accuracy of which is sworn to under penalty of perjury, and which, at a minimum:

- a. Describes the steps that Respondent's Executive Officers have taken to reasonably assess whether Respondent is complying with the Compliance Plan and each applicable paragraph and subparagraph of the Consent Order;
 - b. Describes in detail whether and how Respondent has complied with the Compliance Plan and each applicable paragraph and subparagraph of the Consent Order, including the manner of verification of such compliance and any corrective actions taken to remedy potential non-compliance with the applicable requirement, paragraph, or subparagraph; and
 - c. attaches a copy of each Consent Order Acknowledgment obtained under Section X, unless previously submitted to the Bureau.
23. Respondent's Executive Officers must:
- a. Authorize whatever actions are necessary for Respondent to assess whether Respondent is complying with the Compliance Plan and each applicable paragraph and subparagraph of the Consent Order;
 - b. Authorize whatever actions, including corrective actions, are necessary for Respondent to fully comply with the Compliance Plan and each applicable paragraph and subparagraph of the Consent Order; and

- c. Require timely reporting by management to Respondent's Executive Officers on the status of compliance obligations.

MONETARY PROVISIONS

VIII.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

24. Under § 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, Respondent must pay a civil money penalty of \$2,250,000 to the Bureau.
25. 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.
26. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
27. Respondent, for all purposes, must treat the civil money penalty paid under this Consent Order as a penalty paid to the government. 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.
28. 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 or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction 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.
29. 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.

30. 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.
31. Respondent acknowledges that its Taxpayer Identification Number, which Respondent previously submitted to the Bureau, may be used for collecting and reporting on any delinquent amount arising out of this Consent Order, in accordance with 31 U.S.C. § 7701.
32. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Supervision 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.

COMPLIANCE PROVISIONS

IX.

Reporting Requirements

IT IS FURTHER ORDERED that:

33. 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, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
34. Within 7 days of the Effective Date, Respondent must:
 - a. designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Respondent;

- b. designate at least one telephone number and email, physical, and postal addresses as points of contact for consumers with inquiries related to consumer relief under the Consent Order;
 - c. 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
 - d. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
35. Respondent must report any change in the information required to be submitted under Paragraph 34 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

X.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

36. Within 7 days of the Effective Date, Respondent must submit to the Supervision Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.

37. 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.
38. 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.
39. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
40. Ninety days from the Effective Date, Respondent must submit to the Bureau a list of all persons and their titles to whom this Consent Order has been delivered under the Section of this Order titled “Order Distribution and Acknowledgment” and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 39.

XI.

Recordkeeping

IT IS FURTHER ORDERED that:

41. Respondent must create and retain the following business records:
 - a. all documents and records necessary to demonstrate full compliance with the Compliance Plan and each provision of this Consent Order, including all submissions to the Bureau.
 - b. copies of all sales scripts; training materials; advertisements; websites; and other marketing materials, including any such materials used by a third party on Respondent's behalf.
 - c. for all mortgage refinance products, accounting records showing the gross and net revenues generated by the mortgage refinance product;
 - d. all consumer complaints (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.
 - e. records showing, for each employee providing services related to a mortgage refinance product, that person's name, telephone number, email, physical, and postal address, job title or position, dates of service, and, if applicable, the reason for termination.
 - f. records showing, for each service provider providing services related

to a mortgage refinance product, 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.

- g. recordings of all consumer phone calls, both incoming and outgoing.
42. All documents and records must be maintained in their original electronic format. Data should be centralized, and maintained in such a way that access, retrieval, auditing and production are not hindered.
43. Respondent must make the documents identified in Paragraph 41 available to the Bureau upon the Bureau's request.

XII.

Notices

IT IS FURTHER ORDERED that:

44. 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* New Day Financial, LLC, File No. 2024-CFPB-0008," and send them to the following email: Enforcement_Compliance@cfpb.gov addressed as follows:

ATTN: Supervision Director
Consumer Financial Protection Bureau
Office of Supervision Policy

XIII.

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

45. Respondent must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent must provide truthful and complete information, evidence, and testimony. Respondent must cause Respondent's officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 10 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.
46. Respondent must remain registered for the Bureau's Company Portal and in connection with responding to consumer complaints and inquiries on the Company Portal must comply with the timely response requirements set forth in § 1034(b)(1-3) of the CFPB, 12 U.S.C. § 5534(b).
47. Unless otherwise prohibited by law or regulation, Respondent must identify to consumers on the landing page of Respondent's website(s) offering

mortgage loan products that consumers can file a complaint with the Bureau and provide the applicable telephone, website, and mailing information to do so.

XIV.

Compliance Monitoring

IT IS FURTHER ORDERED that:

48. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
49. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
50. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in Section IV; or (c) compliance with the Consent Order. The person interviewed may have counsel present.

51. 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.

XV.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

52. 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 Supervision Director.
53. The Supervision Director may, in their discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if they determine good cause justifies the modification. Any such modification by the Supervision Director must be in writing.

XVI.

ADMINISTRATIVE PROVISIONS

IT IS FURTHER ORDERED that:

54. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as

described in Paragraph 55. Further, for the avoidance of doubt, the provisions of this Consent Order do not bar, estop, or otherwise prevent any other person or governmental agency from taking any action against Respondent.

55. 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.
56. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 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.

57. This Consent Order will terminate on the later of 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 initiated within 5 years of the Effective Date. 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.
58. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
59. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
60. 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 § 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.

61. 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.
62. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its board members, its Executive Officers, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this the 29th day of August, 2024.

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau