

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

ADMINISTRATIVE PROCEEDING
File No. 2016-CFPB-0011

In the Matter of:

DAVID EGHBALI

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed certain mortgage-origination practices of David Eghbali (Respondent, as defined below), a loan officer formerly employed by Wells Fargo Bank, N.A. (Wells Fargo) and has identified the following law violations: Respondent engaged in an illegal scheme to manipulate escrow fees charged to consumers in mortgage-loan transactions in violation of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607(a); 12 CFR § 1024.14(b), and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5536(a)(1)(A). In exchange for his referrals of settlement-service business to New Millennium Escrow, Inc. (New Millennium), Respondent directed New Millennium, and New Millennium agreed, to decrease escrow charges for consumers in certain transactions and, to compensate New Millennium for such decreased fees, to increase them artificially for consumers in other transactions. Respondent directed these fee manipulations to avoid pricing constraints that otherwise would have restricted his ability to offer certain customers “no-cost” loans, and ultimately to increase the number of loan transactions

he could close. Under §§ 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 §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, and § 8 of RESPA, 12 U.S.C. § 2607.

II **Stipulation**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated May 24, 2016 (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 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. “**Effective Date**” means the date on which the Consent Order is issued.
 - b. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his delegate.

- c. “**Mortgage Industry**” means any business that involves a federally related mortgage loan or loans as defined in 12 U.S.C. § 2602(1) or any business that involves settlement services as defined in 12 U.S.C. § 2602(3).
- d. “**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.
- e. “**Respondent**” means David Eghbali.

IV

Bureau Findings and Conclusions

The Bureau finds the following:

- 4. Respondent was a loan officer at the Wilshire Crescent Wells Fargo branch located at 9354 Wilshire Boulevard in Beverly Hills, California, from November 2007 through July 2015. While employed by Wells Fargo, in connection with originating federally related mortgage loans to consumers primarily for personal, family, or household purposes, Respondent provided real-estate “[s]ettlement services” within the meaning of RESPA, including but not limited to the taking of loan applications. *See* 12 U.S.C. § 2602(3). Therefore, Respondent was a “covered person” under the CFPB. 12 U.S.C. § 5481(6), (15)(A)(iii).
- 5. Respondent’s Nationwide Mortgage Licensing System and Registry (NMLS) unique identifier is 450328.

6. New Millennium provided services in connection with real-estate settlements. New Millennium's services included but were not limited to facilitating the processing and closing, or settlement, of real-estate transactions.
7. A consumer obtaining a mortgage ordinarily does not have a preferred escrow company; instead, particularly in refinance transactions, consumers often rely on their loan officers to recommend or select an escrow company.
8. From at least November of 2013 through February of 2015, Respondent and New Millennium engaged in a scheme in which they manipulated escrow fees, at Respondent's direction, by shifting them among loans in order to structure no-cost mortgage transactions. In exchange for the flexibility to shift fees from some loans to others, Respondent referred settlement-services business for federally related mortgages to New Millennium (the Fee-Shifting Scheme).
9. As part of the Fee-Shifting Scheme, Respondent directed that escrow fees be lowered on certain loans so that he could offer the prospective borrowers "no-cost" refinancing transactions. Respondent directed these fee reductions where borrowers' closing costs, including escrow fees, otherwise would have exceeded the credit available to them under Wells Fargo's pricing guidelines, given their chosen interest rates.
10. Respondent instructed New Millennium to raise fees for other borrowers, whom he identified, to permit the company to recoup its lost revenue.
11. Respondent directed New Millennium to decrease or raise fees on numerous occasions.
12. Manipulating the escrow fees on loans he referred to New Millennium allowed Respondent to structure no-cost loans, within Wells Fargo's pricing guidelines,

and to retain customers who might otherwise have obtained a loan from a competitor bank.

13. Respondent was paid by commission. Through the Fee-Shifting Scheme, New Millennium offered Respondent a valuable service, i.e., the ability to manipulate fees to ensure his loans could be presented as no-cost loans to consumers. This allowed Respondent to close more loans and to increase his commission.
14. In addition to increasing his commission by generating more business, Respondent was able to achieve “President’s Club” status from 2011 through 2014, a recognition given by Wells Fargo to top-producing loan officers by volume of sales or number of loans closed. Along with this recognition, Respondent received a bonus on each loan that he closed.
15. In return for its participation in the Fee-Shifting Scheme, Respondent referred a substantial amount of business to New Millennium. From November 2013 through February 2015, Respondent referred more than 100 loans to New Millennium.
16. As described above, Respondent received fees, kickbacks, or things of value under agreements or understandings that business incident to or a part of a real-estate-settlement service involving federally related mortgage loans would be referred to New Millennium, in violation of RESPA, 12 U.S.C. § 2607(a); 12 CFR § 1024.14(b).
17. Respondent’s RESPA violations constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

ORDER

V

Conduct Provisions

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

18. Respondent may not give and may not accept any fee, kickback, or thing of value pursuant to an understanding, oral or otherwise, that any real-estate-settlement-service business will be referred to any person;
19. Respondent is limited from participation in the Mortgage Industry in any professional capacity for one year from the Effective Date.
20. Within 10 days of the Effective Date, Respondent must disclose this action and Order to NMLSR and, in accordance with NMLSR procedure, upload an electronic copy of this Order.

VI

Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

21. 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, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$85,000.00 to the Bureau.
22. 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.
23. Respondent must pay this amount according to the following schedule:
 - a. within 10 days of the Effective Date, \$25,000;
 - b. by July 26, 2016, \$20,000;

- c. by September 27, 2016, \$20,000; and
 - d. by November 22, 2016, \$20,000.
24. 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 CFPB, 12 U.S.C. § 5497(d).
25. 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.
26. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that he is entitled to, nor may he 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.

27. 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.
28. 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 him.
29. Under 31 U.S.C. § 7701, Respondent, unless he has already done so, must furnish to the Bureau his taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
30. 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.
31. Under § 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning Respondent to the Bureau, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

VII
Reporting Requirements

IT IS FURTHER ORDERED that:

32. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to the filing of any bankruptcy or insolvency proceeding by or against Respondent. 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.
33. Within 7 days of the Effective Date, Respondent must:
 - a. Identify his telephone numbers and all email, Internet, physical, and postal addresses, including all residences;
 - b. Describe in detail his involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including his title, role, responsibilities, participation, authority, control, and ownership.
34. For one year from the Effective Date, Respondent must notify the Bureau of (a) any change in name, including aliases or fictitious names; (b) any change in residence, postal address, email address, or telephone number; or (c) any change in title or role in any business activity, including any business for which Respondent provides services, whether as an employee, officer, or any otherwise, and any entity in which he has any ownership interest, identifying for each its name, physical address, and internet address.

VIII
Notices

IT IS FURTHER ORDERED that:

35. 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 David Eghbali*, File No. 2016-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

IX
Cooperation with the Bureau

IT IS FURTHER ORDERED that:

36. 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 appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 5 days

written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

X
Compliance Monitoring

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

37. 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.
38. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
39. 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.

XI

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

40. 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.
41. The Enforcement Director may, in his discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and

changes to reporting requirements) if he determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XII **Administrative Provisions**

42. 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 ¶ 43.
43. 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, 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.
44. 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.

45. 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.
46. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
47. 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 CFPB, 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 he may be found and Respondent may not contest that court's personal jurisdiction over him.
48. 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.

49. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent to violate any law, rule, or regulation.

IT IS SO ORDERED, this 25 th day of May, 2016.



Richard Cordray
Director
Consumer Financial Protection Bureau