

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2014-CFPB-0013

In the Matter of: **CONSENT ORDER**
U.S. Bank National Association

The Consumer Financial Protection Bureau (Bureau) has reviewed the practices of Respondent Bank, U.S. Bank National Association (Respondent or Bank, as defined below), relating to add-on products and has identified violations of law. Under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563 and 5565, the Bureau issues this Consent Order (Consent Order).

I
Overview

The Bureau finds that the Bank has engaged in violations of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536, in connection with its third-party service provider's billing and administration of Identity Protection Products to Customers (as defined below), which occurred during the period between 2003 and August 2012.

II
Jurisdiction

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

III Stipulation

2. The Bank has executed a “Stipulation and Consent to the Issuance of Consent Order,” (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, the Bank has consented to the issuance of this Consent Order by the Bureau under Sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any findings of fact or conclusions of law, except that the Bank admits the facts necessary to establish the Bureau’s jurisdiction over the Bank and the subject matter of this action.

IV Definitions

3. The following definitions apply to this Consent Order:
 - a. “Add-On Product” means any consumer financial product or service, as defined by Section 1002(5) of the CFPB, 12 U.S.C. § 5481(5), which is offered as an optional add-on product to Bank credit cards or other consumer financial products of the Bank.
 - b. “Affected Customer” is any customer who, between January 2004 and August 2012, was enrolled in an Identity Protection Product and who was Mismatched during any portion of his or her enrollment.
 - c. “Affinion” means “Affinion Group,” including its subsidiary, Trilegiant Corporation.
 - d. “Bank” means U.S. Bank National Association, and its predecessors, successors and assigns.

- e. “Board” means the Bank’s duly elected and acting Board of Directors.
- f. “Customer” means any person who was enrolled in an Identity Protection Product.
- g. “Effective Date” means the date on which the Consent Order is issued.
- h. “Identity Protection Products” refers to the identity theft protection products, “Privacy Guard” and “Identity Secure,” which included credit monitoring and credit report retrieval services, among other benefits, and were marketed or sold to Bank Customers.
- i. “Mismatched” refers to the status of a Customer who, at a given time, was being billed for an Identity Protection Product but who, for any reason:
 - i. never received credit monitoring services because no written authorization was obtained, as required to access credit information from the credit reporting agencies pursuant to the Fair Credit Reporting Act, (FCRA), 15 U.S.C. § 1681 et seq.;
 - ii. received only partial credit monitoring services for one or more of the following reasons:
 - 1. for some period of time following the Customer’s enrollment in the Identity Protection Product, no written authorization was obtained;
 - 2. there was insufficient information to process the Customer’s authorization; or
 - 3. one or more credit reporting agencies was unable to

- match the Customer's authorization, requiring additional information to verify the Customer's identity; or
- iii. failed to receive credit monitoring services for any other reason.
- j. "Regional Director" means the Regional Director for the Midwest Region for the Office of Supervision for the Consumer Financial Protection Bureau, or his/her delegatee.
- k. "Reimbursement End Date" is the date on which the Affected Customer stopped being billed for the Identity Protection Product.
- l. "Reimbursement Start Date" is the date on which the Affected Customer entered Mismatched status.
- m. "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 the Bank based on substantially the same facts as described in Section V of this Consent Order.
- n. "Service Provider" means any service provider, as defined in Section 1002(26) of the CFPA, 12 U.S.C. § 5481, that provides services for Add-On Products under a contractual obligation to the Bank.

V **Bureau Findings and Conclusions**

The Bureau finds the following:

4. The Bank is a national bank chartered in Cincinnati, Ohio and headquartered in Minneapolis, Minnesota. As of March 31, 2014, the Bank had approximately \$367 billion in assets.

5. The Bank is an insured depository institution with assets greater than \$10 billion within the meaning of 12 U.S.C. § 5515(a).
6. The Bank is a “covered person” as that term is defined by 12 U.S.C. § 5481(6).
7. From at least 2003 to approximately January 2012, the Bank marketed Identity Protection Products to Bank Customers and referred interested Bank Customers to Affinion, which offered for sale, sold, and administered Identity Protection Products, which included credit monitoring and credit report retrieval services.
8. From at least 2003 to approximately August 2012, Affinion performed the sales, servicing, and billing for the Identity Protection Products pursuant to agreements with the Bank, including U.S. Bank National Association ND, and with U.S. Bancorp Insurance Services, LLC.
9. On May 13, 2013, U.S. Bank National Association ND merged with and into the Bank.
10. To provide the credit monitoring and credit report retrieval services, the FCRA, 15 U.S.C. § 1681b, required a “permissible purpose” to obtain Customers’ credit information from the credit reporting agencies. Among other reasons, a credit reporting agency may release a credit report in accordance with a consumer’s “written instructions.” 15 U.S.C. § 1681b(a)(2).
11. Customers who enrolled in the Identity Protection Products were required to provide sufficient written authorization and personal

- verification information before the Customers' credit bureau reports could be accessed and they could receive credit monitoring services.
12. In many cases, however, some time passed before a Customer's authorization was obtained, or a Customer's authorization was never obtained. In other instances, Customers provided their authorization, but one or more credit reporting agencies could not process the authorization if they were unable to match the Customer's identification information with the agency's own records. In these circumstances, from at least 2003 to approximately August 2012, the Customers were billed the full fee for the Identity Protection Products even when they were not receiving all of the credit monitoring or credit report retrieval benefits of the product.
13. The Bank's compliance monitoring, Service Provider management and quality assurance failed to prevent, identify, or correct the billing for services that were not provided.
14. Sections 1031 and 1036 of the CFPA prohibit "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. §§ 5531, 5536(a)(1)(B).
15. The billing of Identity Protection Product fees and acceptance of payments of such fees while failing to provide credit monitoring and credit report retrieval services has resulted in substantial injury to approximately 420,115 consumers in the amount estimated to be \$47.9 million for Identity Protection Products. This injury was not reasonably avoidable by consumers and is not outweighed by any countervailing benefit to the consumers or to competition.

16. By reason of these billing practices, as described in Paragraphs 7 through 15, the Bank engaged in unfair 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).

ORDER

VI Conduct Provisions

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

17. The Bank and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate, and must take reasonable measures to ensure that its Service Providers, affiliates, and other agents do not violate, Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536, regarding the billing and administration of Identity Protection Products.
18. The Bank must correct all violations of law, as described in this Consent Order, and must implement procedures to prevent their recurrence.
19. The Bank, whether acting directly or indirectly, is prohibited from marketing, soliciting, offering for sale and selling Identity Protection Products or other similar Add-On Products providing credit monitoring or credit report retrieval services or referring Bank customers to third parties who offer such products and services, without first securing a determination of non-objection from the Regional Director, as follows:
 - a. The Bank must submit to the Regional Director a comprehensive compliance plan (Compliance Plan) designed to ensure that the Bank's marketing, servicing, and billing of Identity Protection

Products or other similar Add-On Products providing credit monitoring or credit report retrieval services comply with all applicable Federal consumer financial laws and the terms of this Consent Order. Any Compliance Plan concerning Identity Protection Products or similar Add-On Products providing credit monitoring or credit reporting retrieval services must:

- i. address the manner in which the Bank or Service Provider informs customers and prospective customers that any credit monitoring services will not be activated until receipt of customer authorization for the Bank or Service Provider to access their credit information at credit reporting agencies; and
 - ii. describe how the Bank will avoid having customers billed through accounts at the Bank before the Bank or Service Provider receives authorization to access credit information from each credit reporting agency and during a period when the credit reporting agency has not yet processed authorizations submitted by customers.
- b. The Regional 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 Regional Director directs the Bank to revise the Compliance Plan, the Bank must make the revisions and resubmit the Compliance Plan to the Regional Director.
 - c. The Bank may market or sell the Identity Protection Products or other similar Add-On Products providing credit monitoring or credit report

retrieval services only after receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan and only after adhering to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

20. Within 90 days of the Effective Date, the Bank must submit a plan to address the actions that are necessary and appropriate to achieve compliance with this Consent Order (Action Plan). The Board or a Committee thereof must ensure the Action Plan is submitted to the Regional Director for prior determination of supervisory non-objection.
21. The Action Plan must include the review, and if necessary, revision of the Bank's Third-Party Risk Management Program and Responsible Banking Program (collectively, Programs) to ensure that the Programs require, at a minimum:
 - a. An analysis to be conducted by the Bank, prior to the Bank entering into a contract with an Add-On Product Service Provider, of the ability of the Service Provider to perform the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s) in compliance with all applicable Federal consumer financial laws and the Bank's policies and procedures.
 - b. For new and renewed contracts, a written contract between the Bank and the Service Provider, which sets forth the responsibilities of each party, especially:

- i. the Service Provider's specific performance responsibilities and duty to maintain adequate internal controls over the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s);
 - ii. the Service Provider's responsibilities and duty to provide adequate training on applicable Federal consumer financial law and the Bank's policies and procedures to all Service Provider employees or agents engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Products;
 - iii. granting the Bank the authority to conduct periodic onsite reviews of the Service Provider's controls, performance, and information systems as they relate to the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s); and
 - iv. the Bank's right to terminate the contract if the Service Provider materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph.
- c. Periodic onsite reviews by the Bank of the Service Provider's controls, performance, and information systems.
 - d. A written comprehensive assessment, to be conducted on an annual basis, of the unfair, deceptive, and abusive acts or practices ("UDAAP") risk for existing or new Add-On Products and for any changes to existing Add-On Products, including, but not limited to

the UDAAP risk of the governance control, marketing, sales, delivery, servicing, and fulfillment of services for new Add-On Products and existing Add-On Products, including the UDAAP risk of marketing and sales practices.

- e. The development and implementation of written policies and procedures to effectively manage, detect, and mitigate, on an ongoing basis, the risks identified in the written assessment required by the preceding Paragraph.
- f. Comprehensive written policies and procedures for identifying and reporting any violation of Federal consumer financial laws or the Bank's policies and procedures relating to Add-On Products by the Bank's employees or Service Providers' employees or agents, in a timely manner, to a specified executive risk or compliance manager at the Bank. The manager to whom such reports are made must be independent of the unit overseeing the sale and marketing of Add-On Products.
- g. Development of training materials relating to identifying and addressing violations of Federal consumer financial laws relating to Add-On Products that will be incorporated into the existing annual compliance training for appropriate employees.
- h. Written policies and procedures to ensure that the appropriate employees and Bank departments have the requisite authority and status within the Bank so that appropriate reviews of Add-On

Products marketed or sold by the Bank or through Service Providers may occur and deficiencies are identified and properly remedied.

22. After receipt by the Bank of a determination of supervisory non-objection from the Regional Director to the Action Plan, the Board, or a Committee of the Board, must ensure the Bank's adoption and implementation of, and compliance with, the Action Plan.
23. Any material proposed changes to or deviations from the approved Action Plan, or proposed changes or deviations relating to Add-On Products, must be submitted in writing to the Regional Director for determination of supervisory non-objection.
24. The Bank's Internal Audit department must periodically conduct an assessment of the Bank's compliance with the Programs in connection with the marketing, sales, delivery, servicing, and fulfillment of services for Add-On Products. Such assessments must occur within 120 days after the Bank's receipt of a determination of supervisory non-objection to the Action Plan, and periodically but at least annually thereafter, and the findings shall be memorialized in writing. Within 30 days of completing each assessment, Internal Audit must provide its written findings to the Compliance Committee and the Regional Director.

VII **The Compliance Committee**

25. A duly constituted Board committee (the "Compliance Committee") will be responsible for monitoring and coordinating the Bank's compliance with the provisions of this Consent Order, and approving measures

necessary to ensure compliance with this Consent Order (unless other specific approvals are required).

26. Within 120 days of the Effective Date, and thereafter within 30 days after the end of each calendar quarter, the Compliance Committee will submit a written progress report to the Board setting forth in detail the actions taken to comply with this Consent Order, and the results and status of those actions.
27. The Board will forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Regional Director within 10 days of the first Board meeting following receipt of such report, unless additional time is granted by the Regional Director through a written determination of supervisory non-objection.

VIII Role of the Board

28. The Board will ensure that all submissions (including plans, reports, and programs) required by this Consent Order are submitted to the Regional Director.
29. Although this Consent Order requires the Bank to submit certain documents for the review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of the Bank and for ensuring that the Bank complies with Federal consumer financial laws and this Consent Order.
30. In each instance that this Consent Order requires the Board to ensure adherence to this Consent Order, or perform certain obligations of the Bank,

the Board must:

- a. Authorize whatever actions are necessary for the Bank to fully comply with the Consent Order;
- b. Require the timely reporting by the Bank 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.

IX **Order to Pay Redress**

- 31. Within 10 days of the Effective Date, the Bank must reserve or deposit into a segregated deposit account \$47,900,000 (Estimated Redress), which represents the approximate amount of Customer injury caused by the practices described in Section V, for the purpose of providing redress to Affected Customers as required by this Section. Any redress paid to an Affected Customer pursuant to the order issued by the Comptroller of the Currency shall not be construed to require the Bank to provide a duplicative restitution payment to that Customer under this Consent Order.
- 32. Within 90 days of the Effective Date, the Bank must submit to the Regional Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Regional Director will have the discretion to make a determination of non-objection to the Redress Plan or to direct the Bank to revise it. If the Regional Director directs the Bank to revise the Redress Plan, the Bank must make the revisions and resubmit the Redress Plan to the Regional Director

- within 20 days.
33. The redress amount paid to each Affected Customer must include, as applicable to each Affected Customer:
- a. The sum of:
 - i. the full amount of Identity Protection Product fees paid by an Affected Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date;
 - ii. the full amount of any overlimit fees, as calculated pursuant to the methodology in the Redress Plan, paid by an Affected Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date; and
 - iii. the amount of the estimated finance charges, as calculated pursuant to the methodology in the Redress Plan, paid by an Affected Customer on Identity Protection Product Fees from his or her Reimbursement Start Date through his or her Reimbursement End Date.
 - b. Less any amount that was a previous refund of the fees and charges described above in Subsection (a) of this Paragraph.
34. The Redress Plan must provide processes covering all Affected Customers regardless of their current account status with the Bank, including:
- a. For any open account, the Bank must provide a credit posted to the account, regardless of whether the crediting of an Affected Customer's

- account results in a credit balance.
- b. For any closed account with no balance outstanding, the Bank must mail a certified or Bank check to any Affected Customer.
 - c. For any closed account with a balance outstanding, the Bank must provide a credit posted to the account. Where a credit is issued that is greater than the existing balance, the Bank must mail to the Affected Customer a certified or Bank check in the amount of the excess.
 - d. For any charged-off account, either a credit will be issued decreasing the charged-off balance by the amount of redress, or the Bank must issue redress consistent with the requirements for closed accounts in Paragraph 34(b). Where a credit is issued that is greater than the existing charged-off balance, the Bank must mail to the Affected Customer a certified or Bank check in the amount of the excess. Any Redress Notification Letter, as described in Paragraph 35 below, sent with regard to a charged-off account must notify the Affected Customer of the credit decreasing the charged-off balance as well as any additional money the Affected Customer is receiving.
 - e. With respect to any bankruptcy, estate, accounts in litigation and sold charged-off accounts, the Bank must make a refund in accordance with applicable law.
35. The Redress Plan must include: (1) the form of the letter (Redress Notification Letter) to be sent notifying Affected Customers of the redress; and (2) the form of the envelope that will contain the Redress Notification Letter. The

- letter must include language explaining how the amount of redress was calculated; an explanation of the use of a credit or check as applicable; and a statement that the provision of refund payment is in compliance with the terms of this Consent Order. The Bank may not include in any envelope containing a Redress Notification Letter any materials other than the approved letters, and when appropriate, redress checks, unless the Bank has obtained written confirmation from the Regional Director that the Bureau does not object to the inclusion of the additional materials.
36. The Redress Plan must include a description of the following:
- a. Methods used and the time necessary to compile a list of Affected Customers;
 - b. Methods used to calculate the amount of redress to be paid to each Affected Customer as required in this Consent Order;
 - c. Procedures for issuing and tracking redress to Affected Customers; and
 - d. Procedures for monitoring compliance with the Redress Plan.
37. The Bank must make reasonable attempts to locate Affected Customers whose Redress Notification Letter or check is returned for any reason, including performing a standard address search using the National Change of Address System. The Bank must re-mail any returned letters and redress checks to corrected addresses within 90 days of receiving a return. Any unclaimed funds must be disposed of in compliance with the Redress Plan.
38. With respect to any Affected Customer's account that receives redress as a credit that decreases the existing balance or charged-off balance, the Bank

must, as permitted by law and in accordance with existing procedures:

- a. Report the updated balance to each credit reporting agency to which the Bank had previously furnished balance information for the account;
 - b. Delete the account tradeline at each credit reporting agency to which the Bank had previously furnished balance information for the account; or
 - c. In the case of an account sold to an unaffiliated third party, request that such third-party owner of the debt report the updated balance to, or delete the account trade line at, each credit reporting agency to which the Bank or the third-party owner of the debt had previously furnished balance information for the account.
39. After receiving notification that the Regional Director has made a determination of non-objection to the Redress Plan, the Bank must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan. Any proposed changes to or deviation from the approved Redress Plan must be submitted in writing to the Regional Director for review and non-objection.
40. Within 90 days from completion of the Redress Plan, the Bank's Internal Audit department must review and assess compliance with the terms of the Redress Plan (Redress Review).
41. The Redress Review must include an assessment of the Redress Plan and the methodology used to determine the population of Affected Customers; the amount of redress for each Affected Customer; the procedures used to issue and track redress payments; the procedures used for reporting and

- requesting the reporting of updated balances, deleting or requesting the deletion of account trade lines, as applicable, to the credit reporting agencies; and the work of any independent consultants that the Bank has used to assist and review its execution of the Redress Plan.
42. The Redress Review must be completed and summarized in a written report (Redress Review Report), which must be completed within 60 days of completion of the Redress Review. Within 10 days of its completion, the Redress Review Report must be submitted to the Regional Director and the Board.
43. After completing the Redress Plan, if the amount of redress provided to Affected Customers is less than \$25.5 million (the Payment Floor), within 30 days of the completion of the Redress Plan, the Bank must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Customers and the Payment Floor.
44. If the Bureau determines, in its sole discretion, that additional redress to Affected Customers is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau may apply any remaining funds for such other equitable relief, including consumer information remedies, as determined to be reasonably related to the violations described in Section V of this Consent Order. Any funds not used for such equitable relief will be deposited in the U.S. Treasury as disgorgement. The Bank will have no right to challenge any actions that the Bureau or its representatives may take under this paragraph.

45. The Bank may not condition the payment of any redress to any Affected Customer under this Consent Order on the Affected Customer waiving any right.

X
Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

46. Under Section 1055(c) of the CFPB, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section V of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), the Bank must pay a civil money penalty of \$5,000,000 to the Bureau.
47. Within 10 days of the Effective Date, the Bank 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.
48. 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 CFPB, 12 U.S.C. § 5497(d).
49. The Bank 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, the Bank 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.

50. To preserve the deterrent effect of the civil money penalty, in any Related Consumer Action, the Bank may not argue that the Bank is entitled to, nor may the Bank benefit by, any offset or reduction of any compensatory damages imposed in any Related Consumer Action, by any amount of the civil money penalty paid in this action (“Penalty Offset”). If the court in any Related Consumer Action grants a Penalty Offset, the Bank must, within 30 days after entry of a final order granting the Penalty Offset, notify the Regional Director, and pay the amount of the Penalty Offset to the U.S. Treasury. The 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.

XI **Additional Monetary Provisions**

51. In the event of any default on the Bank’s obligations to make payment under this Consent Order, interest, computed pursuant to 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.
52. The Bank 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 the Bank, *provided, however,* that funds reserved or placed into a segregated account pursuant Paragraph 31 may be returned to the Bank after the Bank has complied with the requirements set forth in Paragraph 43.

53. Under 31 U.S.C. § 7701, the Bank, 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.
54. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, the Bank must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that the Bank has 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.

XII

Reporting Requirements

IT IS FURTHER ORDERED that:

55. The Bank 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 the Bank; or a change in the Bank's name or address. The Bank 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.
56. Within 90 days of the Effective Date, and again one year after the Effective Date, the Bank must submit to the Regional 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 the Bank has complied with this Consent Order; and
 - b. Attaches a copy of each Consent Order Acknowledgment obtained under Section XIII, unless previously submitted to the Bureau.
57. After the one-year period, the Bank must submit to the Regional Director additional Compliance Reports within 14 days of receiving a written request from the Bureau.

XIII **Order Distribution and Acknowledgment**

IT IS FURTHER ORDERED that:

58. Within 30 days of the Effective Date, the Bank 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 marketing, sales, servicing, or billing of Add-On Products.
59. For five years from the Effective Date, the Bank must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XII, 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 marketing, sales, servicing, or billing of Add-On Products before they assume their responsibilities.

60. The Bank must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order with any electronic signatures complying 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.

XIV **Recordkeeping**

IT IS FURTHER ORDERED that:

61. Beginning on the Effective Date, for a period of at least two years from the date a customer is no longer enrolled in an Identity Protection Product or similar Add-On Product providing credit monitoring or credit report retrieval services, the Bank must ensure that the following records, to the extent they exist, are retained:
- a. For each individual customer and his or her enrollment in the Identity Protection Product or similar Add-On Product:
 - i. records containing, with respect to each customer, his or her name, addresses, email addresses, phone numbers, dollar amounts paid, benefits applied for and benefits received, quantity of products purchased, description of the Add-On Product purchased, the date on which the Add-On Product was purchased, and a copy of the welcome kit mailed to each customer (if a customer left the program, include the date the customer left a program and the reason the customer left the program); and

- ii. a copy of the customer's authorization to access his or her credit information from the credit reporting agencies for purposes of activating credit monitoring or retrieval, and the date the customer was first charged for the Add-On Product.
 - b. For each Identity Protection Product or similar Add-On Product:
 - i. records reflecting the expenses and revenues related to the Add-On Product;
 - ii. records reflecting, on an annual basis, the number of customers who canceled the Add-On Product, and the number of customers whose customer accounts were charged off by the Bank;
 - iii. records of all customer complaints and refund requests that are recorded and tracked by the Bank in accordance with Bank policies (whether received directly or indirectly, such as through a Service Provider), and any responses to those complaints or requests; and
 - iv. copies of all sales scripts; sales and marketing training materials; advertisements; or other marketing materials, including terms and conditions, fulfillment packages, and welcome kits; and including any materials used by Service Providers on the Bank's behalf.
- 62. The Bank must create, for at least five 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. All documents and records pertaining to the Redress Program, described in Section IX above.
63. The Bank must retain the documents identified in Paragraph 62 for at least five years.
64. The Bank must make the documents identified in Paragraph 62 available to the Bureau upon the Bureau's request.

XV **Notices**

IT IS FURTHER ORDERED that:

65. 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 U.S. Bank National Association, File No. 2014-CFPB-[docket number listed above]*," and send them either:

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

Regional Director, CFPB Midwest Region
230 South Dearborn Street
Suite 1590
Chicago, IL 60604

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 addresses below and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Regional Director, CFPB Midwest Region
230 South Dearborn Street

Suite 1590
Chicago, IL 60604

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

XVI
Compliance Monitoring

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

66. Within 14 days of receipt of a written request from the Bureau, the Bank must submit additional compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
67. The Bank must permit Bureau representatives to interview any employee or other person affiliated with the Bank who has agreed to such an interview. The person interviewed may have counsel present.
68. Nothing in this Consent Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

XVII
Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

69. The Bank 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 Regional Director.

70. The Regional 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 Regional Director must be in writing.

XVIII **Administrative Provisions**

71. 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 the Bank, except as described in Paragraph 72.
72. The Bureau releases and discharges the Bank from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section V 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 the Bank 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.
73. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

74. The Consent Order will remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
75. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
76. 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 CFP Act, 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 the Bank wherever the Bank may be found and the Bank may not contest that court's personal jurisdiction over the Bank.
77. 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.
78. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Bank, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 24th day of September, 2014.


Richard Cordray
Director
Consumer Financial Protection Bureau