

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

ADMINISTRATIVE PROCEEDING  
File No. 2020-BCFP-0026

In the Matter of:

**CONSENT ORDER**

**DISCOVER BANK, THE STUDENT  
LOAN CORPORATION, AND  
DISCOVER PRODUCTS, INC.**

The Bureau of Consumer Financial Protection (Bureau) has reviewed certain student loan servicing activities of Discover Bank, The Student Loan Corporation, and Discover Products, Inc. (collectively, Respondent, as defined below), including Respondent's compliance with a 2015 Consent Order issued by the Bureau and Respondent's migration of its student loan servicing platform to a new servicing system. The Bureau has identified the following law violations: (1) Respondent violated the 2015 Consent Order by misrepresenting the minimum periodic payments owed by consumers, the amount of annual interest paid by consumers, and other facts material to consumers concerning the servicing of their loans, and by failing to provide all redress required by the 2015 Consent Order, in violation of Section 1036(a)(1)(A) of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5536(a)(1)(A); (2) Respondent engaged in deceptive

acts and practices by misrepresenting the minimum periodic payments owed by consumers and the amount of annual interest paid by consumers, in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B); (3) Respondent engaged in unfair acts and practices by withdrawing payments from consumers' accounts without valid authorization and by cancelling or not withdrawing payments without notifying consumers, in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B); (4) Respondent violated the Electronic Funds Transfer Act (EFTA), 15 U.S.C. §1693e(a) and (b), and Regulation E, 12 C.F.R. § 1005.10(b) and (d), by withdrawing payments from consumers' accounts without a valid authorization; and (5) Respondent's violations of EFTA were also violations of Section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A). 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: (a) Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, and (b) Section 918(a)(5) of EFTA, 15 U.S.C. § 1693o(a)(5).

## II

### **Stipulation**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated December 14, 2020 (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, 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. “2015 Consent Order” means the administrative consent order the Bureau issued on July 22, 2015 at docket number 2015-CFPB-0016.
  - b. “Affected Consumers” includes any consumers potentially impacted by a Consent Order Violation, as defined below, or a Migration Issue, as defined below.

- c. “Backdate” or “Backdating” means a loan adjustment applied retroactively, resulting in the reprocessing of all loan transactions from the effective date of the loan adjustment going forward to ensure the adjustment is fully incorporated and reflected in the loan history and amounts owed, or other appropriate adjustment as provided in the approved Redress Plan, as described in Section VIII.
- d. “Board” means Respondent’s duly elected and acting Board of Directors.
- e. “Consent Order Violation” means any act or omission that was not in compliance with the 2015 Consent Order, while such order was in effect.
- f. “Effective Date” means the date on which this Consent Order is entered on the administrative docket.
- g. “Migration” means the migration of Respondent’s student loan servicing platforms to a new system in 2017-2018.
- h. “Migration Issue” means any student loan servicing error arising from the Migration that impacted student loan borrowers or cosigners.

- i. “Regional Director” means the Regional Director for the Midwest Region for the Office of Supervision for the Bureau, or his or her delegate.
- j. “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.
- k. “Respondent” means, collectively, Discover Bank, The Student Loan Corporation, and Discover Products, Inc., and their successors and assigns.

## IV

### **Bureau Findings and Conclusions**

The Bureau finds the following:

- 4. Discover Bank, which is headquartered in Greenwood, Delaware, is an insured depository institution with assets greater than \$10,000,000,000 within the meaning of 12 U.S.C. § 5515(a).
- 5. The Student Loan Corporation and Discover Products, Inc. are affiliates of Discover Bank, and are also service providers to Discover Bank within the meaning of 12 U.S.C. § 5481(6)(B).

6. Discover Bank, the Student Loan Corporation, and Discover Products, Inc. each service student loans. Servicing loans is a “financial product or service” within the meaning of 12 U.S.C. § 5481(15)(A)(i), and thus is a “consumer financial product or service” under 12 U.S.C. § 5481(5)(A).
7. Discover Bank, The Student Loan Corporation, and Discover Products, Inc. each are a “covered person” under 12 U.S.C. § 5481(6) because they are each engaged in the offering or providing of a “consumer financial product or service.”
8. On July 22, 2015, the Bureau issued the 2015 Consent Order for the following violations of the CFPB: (1) Respondent engaged in unfair and deceptive acts and practices by failing to furnish clear information about the student loan interest consumers paid, in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPB; (2) Respondent engaged in unfair acts and practices by initiating collection calls to consumers before 8 a.m. or after 9 p.m. in the time zone of their address, in violation of Sections 1031(a) and 1031(a)(1)(B) of the CFPB; (3) Respondent engaged in deceptive acts and practices by overstating the minimum amount due in student loan billing statements, in violation of Sections 1031(a) and 1036(a)(1)(B) of the

CFPA; and (4) Respondent violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, through its collection activities on certain defaulted student loans.

9. Approximately two years after the 2015 Consent Order was issued, in September 2017, Respondent began the migration of its student loan servicing platform to a new system.
10. Respondent migrated approximately 1.5 million loans for approximately 778,000 borrowers to the new system during the Migration.
11. The Migration resulted in hundreds of Migration Issues that harmed tens of thousands of consumers and resulted in numerous Consent Order Violations.
12. In September 2017, the Bureau examined Respondent to assess Respondent's compliance with the 2015 Consent Order.
13. Respondent knew shortly after the Migration that many Migration Issues were leading to potential Consent Order Violations.
14. Although Respondent was aware of potential Consent Order Violations arising from the Migration while Bureau examiners were on-site examining Respondent's compliance with the 2015 Consent

Order, Respondent did not report these violations to the Bureau at that time.

15. While Bureau examiners were on-site, Respondent was also aware of other potential Consent Order Violations that occurred before the Bureau's examination that were unrelated to the Migration. Respondent did not report these potential pre-Migration Consent Order Violations to the Bureau while Bureau examiners were on-site.
16. Respondent's representations to the Bureau during the examination about its compliance with the 2015 Consent Order were incomplete and misleading.

#### **Violations of the 2015 Consent Order**

17. Section 1036(a)(1)(A) of the CFPB prohibits a covered person from offering or providing any consumer financial product or service not in conformity with Federal consumer financial law or committing any act or omission in violation of a Federal consumer financial law. 12 U.S.C. § 5536(a)(1)(A).
18. "Federal consumer financial law" includes any orders previously issued by the Bureau. 12 U.S.C. § 5481(14).
19. The 2015 Consent Order is an order previously issued by the Bureau within the meaning of § 5481(14).

20. Respondent violated the 2015 Consent Order as described herein.

Each of its violations of the 2015 Consent Order constitutes a violation of Section 5536(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Misrepresentations of the Minimum Periodic Payment

21. Paragraph 49(b)(i) of the 2015 Consent Order states that Respondent “may not misrepresent . . . the minimum periodic payment owed by consumers[.]”
22. While the 2015 Consent Order was in effect, Respondent made misrepresentations to more than 100,000 consumers about the minimum periodic payment these consumers owed. Respondent made these misrepresentations in mailed account statements, letters, online, and on phone calls.
23. Most of these misrepresentations occurred as a result of the Migration.
24. In these communications, Respondent either overstated or understated the minimum periodic payment owed by consumers.
25. Consumers were harmed by Respondent’s misrepresentations of the minimum periodic payment owed, resulting in some consumers paying more or less than the correct monthly amount, and some

consumers may have become late or delinquent because they could not pay the amount they believed was the minimum amount due.

26. Respondent's numerous misrepresentations of the minimum periodic payment due from consumers violate Paragraph 49(b)(i) of the 2015 Consent Order, and thus also violate Section 5536(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Misrepresentations of the Amount of Interest Paid

27. Paragraph 49(b)(ii) of the 2015 Consent Order states that Respondent "may not misrepresent . . . the amount of interest paid by consumers[.]"
28. The tax code allows student loan interest, up to \$2,500, to be deducted as an adjustment to income for some taxpayers.
29. While the Consent Order was in effect, Respondent misrepresented to more than 8,000 consumers the amount of interest they had paid in 1098E tax forms, letters, online, or over the phone.
30. Most of these misrepresentations occurred as a result of the Migration.
31. In the misrepresentations, Respondent either overstated or understated the amount of interest paid by consumers.
32. Respondent misrepresented the amount of interest consumers had paid by amounts ranging from less than \$100 to more than \$40,000, and

which could have impacted consumers' student loan interest deductions by as much as \$2,500.

33. By misrepresenting the amount of interest consumers paid, Respondent may have caused consumers to claim an inaccurate student loan interest deduction, which could lead to financial harm, including causing consumers not to claim their allowable deduction, not to claim their maximum allowable deduction, or to choose to refile their taxes.
34. Respondent's numerous misrepresentations of the amount of interest paid by consumers violate Paragraph 49(b)(ii) of the 2015 Consent Order, and thus also violate Section 5536(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

#### Misrepresentations of Other Material Facts

35. Paragraph 49(b)(iii) of the 2015 Consent Order states that Respondent "may not misrepresent . . . any other fact material to consumers concerning the servicing of their loans."
36. While the 2015 Consent Order was in effect, Respondent misrepresented multiple other facts material to the terms and servicing of consumers' student loans to more than 390,000 consumers.
37. Most of these misrepresentations occurred as a result of the Migration.

38. These misrepresentations to consumers were material because they related to important facts about consumers' loans that could influence consumers' decisions about their loans. For example, Respondent misrepresented (a) the amount of interest some consumers owed due to charging incorrect interest rates or incorrectly capitalizing interest, (b) the applicable interest rate, (c) how payments would be allocated by failing to properly apply consumers' payments, (d) the due date, amount due, or whether a payment was past due, (e) repayment information, and (f) the availability of a reward or a discount, among other things.
  39. Respondent's numerous misrepresentations of material facts violate Paragraph 49(b)(iii) of the 2015 Consent Order, and thus also violate Section 5536(a)(1)(A) of the CFPB, 12 U.S.C. § 5536(a)(1)(A).
- Failure to Pay Redress Required by 2015 Consent Order**
40. Paragraph 58(c) of the 2015 Consent Order requires Respondent to remediate consumers to whom it placed six or more attempted calls or contacts before 8 a.m. or after 9 p.m. in the time zone where the consumer resides.

41. Respondent improperly excluded consumers it had called between January 29, 2014 and July 21, 2015 from the population of consumers it remediated.
42. Respondent initially failed to remediate up to 777 consumers owed money under the 2015 Consent Order.
43. Respondent later remediated these consumers, more than two years after the 2015 Consent Order was issued, after the Bureau questioned Respondent about its failure to remediate this population.
44. By failing to provide this remediation until more than two years after the 2015 Consent Order was issued, Respondent violated Paragraph 58(c) of the 2015 Consent Order, and thus violated of Section 5536(a)(1)(A) of the CFPB, 12 U.S.C. § 5536(a)(1)(A).

### **Deceptive Acts and Practices**

45. Section 1036(a)(1)(B) of the CFPB prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).

#### Misrepresentations of the Minimum Periodic Payment

46. As described in paragraphs 21 through 26, Respondent’s numerous misrepresentations of the minimum periodic payment owed by consumers 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).

**Misrepresentations of the Amount of Interest Paid**

47. As described in paragraphs 27 through 34, Respondent's numerous misrepresentations of the amount of interest paid by consumers 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).

**Unfair Acts and Practices**

48. As a result of the Migration, which began in September 2017, Respondent withdrew automatic payments from more than 17,000 consumers' bank accounts without proper authorization.

Respondent's actions included:

- a. In some instances, Respondent withdrew automatic payment amounts that were higher than the amounts specified in consumers' billing statements;
- b. In some instances, Respondent withdrew unauthorized automatic payments without providing notice to consumers in advance; and
- c. In some instances, Respondent withdrew the same automatic payment twice.

49. As a result of Respondent's actions described in paragraph 48, consumers were deprived the use of their funds and may have incurred NSF and overdraft charges or other fees.
50. In addition, for more than 14,000 consumers, Respondent cancelled, or failed to withdraw, automatic payments without providing notice to consumers.
51. As a result of Respondent's actions described in paragraph 50, Respondent incorrectly placed some of the 14,000 consumers in a delinquency status, caused some consumers' loans to accrue excess interest, and deprived consumers of certain interest rate benefits.
52. Section 1036(a)(1)(B) of the CFPB prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and if the substantial injury is not outweighed by countervailing benefits to consumers or to competition.
53. Respondent's practice of withdrawing automatic payments from consumers' accounts without a valid authorization and cancelling or failing to withdraw automatic payments without providing notice to consumers caused substantial injury to consumers that was not

reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.

54. Thus, Respondent engaged in unfair acts and practices in violation of Sections 1036(a)(1)(B) and 1031(c)(1) of the CFPB. 12 U.S.C. §§ 5536(a)(1)(B), 5531(c)(l).

### **Violations of EFTA and Regulation E**

55. The automatic payments described in paragraphs 48 to 51 above are known as electronic funds transfers (EFTs) under the Electronic Fund Transfer Act (EFTA), 15 U.S.C. § 1693, *et seq.*
56. EFTA, 15 U.S.C. § 1693e(a), and its implementing Regulation E, 12 C.F.R. § 1005.10(b), require preauthorized EFTs from a consumer's account to be authorized in writing.
57. As described in paragraphs 48 to 51, in many instances Respondent withdrew preauthorized EFTs from consumers' accounts without a valid authorization, including by withdrawing amounts that were higher than authorized or withdrawing the same payment twice.
58. EFTA, 15 U.S.C. § 1693e(b), and its implementing Regulation E, 12 C.F.R. § 1005.10(d), require a financial institution or designated payee to provide a consumer with notice at least ten days in advance of any automatic withdrawal that varies from the previous payment or

from the preauthorized amount, unless the consumer has opted out of the notice for a specified range of payment amounts.

59. Although consumers authorized preauthorized EFTs, many of the withdrawals at issue varied from what consumers authorized, Respondent failed to provide advance notice of the varying amounts, and many consumers did not opt out of such notice. Other withdrawals were duplicative of withdrawals Respondent had already made, and thus not authorized.
60. Respondent therefore violated Regulation E, 12 C.F.R. § 1005.10(b) and (d).

#### **Respondent's EFTA Violations are Violations of the CFPA**

61. Section 1036(a)(1)(A) of the CFPA makes it unlawful for covered persons, such as Respondent, to “commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).
62. EFTA is a “Federal consumer financial law.” 12 U.S.C. § 5481(12)(C), (14).
63. By violating EFTA as described in paragraphs 55 to 60, Respondent violated the CFPA. 12 U.S.C. § 5536(a)(1)(A).

V

**CONDUCT PROVISIONS**

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

64. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with student loan servicing, may not violate Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536.
65. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, must consider compliance with the Consent Order in any new initiatives affecting its student loan servicing, including transfer to, acquisition, or implementation of new technologies, systems, or platforms, and implement measures reasonably necessary to achieve compliance with this Consent Order in the execution of such initiatives.
66. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with student loan servicing,

may not violate EFTA, 15 U.S.C. § 1693, *et seq.*, and Regulation E, 12 C.F.R. § 1005, *et seq.*.

67. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not misrepresent, or assist others in misrepresenting, expressly or impliedly, to consumers:
- a. the minimum periodic payment owed by student loan consumers;
  - b. the amount of annual interest paid by student loan consumers; or
  - c. any other fact material to consumers concerning the servicing of their student loans.

68. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with student loan servicing, may not:
- a. withdraw payments from consumers' accounts without authorization; or

- b. cancel authorized withdrawals or fail to withdraw payments from consumers' accounts without providing notice to consumers.
69. Respondent must provide all remediation required by the 2015 Consent Order related to call times, to the extent not already provided.

## VI

### Compliance Plan

**IT IS FURTHER ORDERED** that:

70. Within 90 days of the Effective Date, Respondent must submit to the Regional Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's student loan servicing complies 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;
- b. detailed steps for developing policies, procedures, and processes for reporting to the Board, or any committee thereof, any (i) student loan servicing misstatements, including those relating to minimum amount due and annual interest paid, (ii)

potential violations of federal consumer financial law relating to misstatements of the minimum amount due, annual interest paid, or other material information relating to student loan servicing, and (iii) potential violations of this Consent Order, within 45 days of identification of the issue as reportable under this provision;

- c. detailed steps for developing policies, procedures, and processes for reporting to the Bureau any (i) student loan servicing misstatements, including those relating to minimum amount due and annual interest paid, (ii) potential violations of federal consumer financial law relating to misstatements of the minimum amount due, annual interest paid, or other material information related to student loan servicing, and (iii) potential violations of this Consent Order, within 30 days of the date the issue is reported to the Board or relevant committee as reportable under this provision;
- d. detailed steps for developing policies, procedures, and processes reasonably designed to ensure that when errors occur, impacted consumers are identified and consumer harm is redressed timely; and

- e. specific timeframes and deadlines for implementation of the steps described above.
71. The Compliance Plan must also attach a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.
72. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Respondent to revise it. If the Regional Director directs Respondent to revise the Compliance Plan, Respondent must revise and resubmit the Compliance Plan to the Regional Director within 30 days.
73. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, 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:

74. The Board, or a relevant committee thereof, must review all submissions (including plans, reports, programs, policies, and

procedures) required by this Consent Order prior to submission to the Bureau.

75. Although this Consent Order requires Respondent to submit certain documents for review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with the laws that the Bureau enforces, including Federal consumer financial laws and this Consent Order.
76. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board, or a relevant committee thereof, 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, including reporting (i) student loan servicing misstatements, including those relating to minimum amount due and annual interest paid, (ii) potential violations of federal consumer financial law relating to misstatements of the minimum amount due, annual interest paid, or other material information related to student loan

servicing, and (iii) potential violations of this Consent Order, within 45 days of identification of the issue as reportable under paragraph 70; and

- c. Require timely and appropriate corrective action to remedy (i) student loan servicing misstatements, including those relating to minimum amount due and annual interest paid, (ii) potential violations of federal consumer financial law relating to misstatements of the minimum amount due, annual interest paid, or other material information related to student loan servicing, and (iii) potential violations of this Consent Order.

## **MONETARY PROVISIONS**

### **VIII**

#### **Order to Pay Redress**

- 77. Respondent shall provide redress to all harmed Affected Consumers pursuant to this Consent Order as set forth below, in an amount not less than \$10 million, which includes approximately \$7.7 million in redress Respondent has already voluntarily provided, and at least \$2.3 million Respondent must pay to harmed Affected Consumers.
- 78. Redress that is required to be paid pursuant to this Consent Order shall be paid in accordance with the following principles:

- a. Redress provided pursuant to any sub-section of paragraph 79 shall be paid either through checks mailed by Respondent to harmed Affected Consumers (Cash Redress), or through loan credits Respondent will provide to harmed Affected Consumers (Credit Redress).
    - i. Cash Redress and Credit Redress for the harmed Affected Consumer shall be provided in accordance with the approved Redress Plan.
  - b. Where time value of money is a required component of redress, it shall be calculated using the highest applicable interest rate for the loan, as will be described in the approved Redress Plan.
79. Respondent shall pay redress pursuant to this Consent Order and the approved Redress Plan to harmed Affected Consumers for each Migration Issue or Consent Order Violation that impacted them. Respondent shall pay such redress to address the primary impact of each issue that harmed each Affected Consumer as follows:
- a. Misstatement of Annual Interest Paid or Incorrect 1099MISC or 1099C.
    - i. For any harmed Affected Consumer to whom Respondent either misstated the amount of interest the

Affected Consumer paid in a year by more than \$100, or provided the Affected Consumer with a form 1099MISC or 1099C that misstated the amount of income received by more than \$100, Respondent shall provide (i) Cash Redress of \$75 for the cost of tax refiling, and (ii) up to \$300 to reimburse the harmed Affected Consumer for the cost of retaining their own tax professional. Respondent shall not be required to provide the redress described in Section 79(a), if both (1) the amount actually paid in interest by the Affected Consumer, and (2) the amount reflected on the misstated interest paid disclosure or form, exceeded the allowable student loan interest deduction, currently \$2,500.

- ii. For any harmed Affected Consumer to whom Respondent either misstated the amount of interest the Affected Consumer paid in a year by less than \$100, or provided the Affected Consumer with a form 1099MISC or 1099C that misstated the amount of income received by less than \$100, Respondent shall provide, where

appropriate, redress as will be set forth in the approved Redress Plan.

b. Overstated Minimum Payment Amount. For any harmed Affected Consumer to whom Respondent overstated the minimum payment amount due, Respondent shall provide redress in an amount equal to 12% of the amount overpaid by the consumer.

i. Respondent shall not be required to provide the redress described in paragraph 79(b) to the extent an Affected Consumer (1) did not pay the bill in which Respondent overstated the minimum payment amount due, (2) received a misstated minimum payment amount that was overstated by less than \$5, (3) paid more than the overstated minimum payment amount, or (4) paid less than the correct minimum payment amount.

c. Understated Minimum Payment Amount. For any harmed Affected Consumer to whom Respondent understated the minimum payment amount due, Respondent shall provide redress equal to the difference between the correct amount that should have been billed to an Affected Consumer and the

amount an Affected Consumer did pay, plus interest at an annual rate of 12% from the date Respondent sent the harmed Affected Consumer an understated minimum payment amount due billing statement through the earlier of (1) the date Respondent provides redress, or (2) the last date on which interest accrued on the loan.

i. Respondent shall not be required to provide the redress described in paragraph 79(c) to the extent an Affected Consumer (1) did not pay the bill in which Respondent understated the minimum payment due, (2) received a misstated minimum payment amount that was understated by less than \$5, (3) paid less than the understated minimum payment amount, or (4) paid more than the correct minimum payment amount.

d. Incorrect Higher Interest Rate. For any harmed Affected Consumer to whom Respondent incorrectly charged an interest rate higher than disclosed to the harmed Affected Consumer, Respondent shall either (1) retroactively apply the correct interest rate by Backdating the loan, or (2) if Backdating is not feasible, provide redress in an amount equal to the amount of

additional interest accrued on the loan due to the error, as described in the approved Redress Plan.

- e. Payment Not Applied. For any harmed Affected Consumer for whom Respondent failed to apply a loan payment, if the payment was withdrawn, Respondent shall (1) correctly apply the Affected Consumer's payment and Backdate the loan, (2) if the loan is paid off at the time of redress, provide Cash Redress equal to the amount of the payment. If the payment was not withdrawn, Respondent shall provide redress equal to the amount that should have been applied, plus interest at an annual rate of 12% from the date Respondent should have withdrawn the payment through the earlier of (1) the date Respondent provides redress, or (2) the last date on which interest accrued on the loan.

- f. Unauthorized Withdrawal of Payment or Unauthorized Withdrawal of Amount Too High. For any harmed Affected Consumer from whom Respondent withdrew without authorization a payment or a payment amount that was higher than authorized, Respondent shall refund the unauthorized

payment or excess unauthorized amount withdrawn, pursuant to the approved Redress Plan.

- g. Withdrawal of Payment Amount Too Low. For any harmed Affected Consumer from whom Respondent automatically withdrew a payment amount that was lower than the amount requested by the Affected Consumer, Respondent shall provide redress equal to the difference between the correct amount that should have been withdrawn and the amount that was withdrawn, plus interest at an annual rate of 12% from the date Respondent withdrew the incorrect amount through the earlier of (1) the date Respondent provides redress, or (2) the last date on which interest accrued on the loan.

- h. Material Servicing Misrepresentations. For any harmed Affected Consumer to whom Respondent made material servicing misrepresentations not otherwise described above, including, without limitation, misstating the payment due date, the deferred interest amount, or bankruptcy dischargeability, Respondent shall (1) correct the misstatement in a manner to be set forth in more detail in the approved Redress Plan, and (2) conduct additional research to determine whether the

misrepresentation caused financial harm and make the harmed Affected Consumer whole through appropriate redress for the financial harm.

- i. All Other Migration Issues and Consent Order Violations that harmed Affected Consumers. For all other Migration Issues or Consent Order Violations not otherwise described in this Consent Order or the approved Redress Plan that harmed Affected Consumers, Respondent shall conduct additional research to determine whether the Migration Issue or Consent Order Violation caused financial harm and make the harmed Affected Consumer whole through redress for the financial harm pursuant to an approved Redress Plan.
- j. Respondent will provide redress for harmed Affected Consumers related to the following additional Migration Issues, as will be set forth in the approved Redress Plan:
  - i. Billing statements not sent because bills were not generated;
  - ii. Payments applied incorrectly;
  - iii. Too much interest capitalized;
  - iv. Late move into repayment status; and

- v. Failure to provide lump sum rewards or failure to provide lump sum rewards timely.
80. Respondent shall provide the following additional redress to Affected Consumers:
- a. NSF Reimbursement. Respondent shall provide \$35 for each returned debit to any harmed Affected Consumer whose account Respondent debited without authorization, including, without limitation, where Respondent debited a larger amount than authorized, earlier than disclosed, or twice, where such debit was returned due to insufficient funds.
- b. Inaccurate Delinquencies and Credit Reporting. Respondent shall provide \$50 to any harmed Affected Consumer who was incorrectly reported to a consumer reporting agency as delinquent as a result of a Migration Issue or Consent Order Violation, either because Respondent reported the consumer as delinquent contrary to Respondent's records, or because Respondent reported the consumer as delinquent because a Migration Issue or Consent Order Violation caused the consumer to become 60 or more days delinquent.

- c. Unreimbursed Fees, Costs, Time or Penalties. Respondent shall provide Cash Redress to harmed Affected Consumers who provide reasonable documentation, as more particularly described in the approved Redress Plan, for reimbursement related to (1) amending tax returns, (2) correcting credit reporting, (3) paying overdraft fees, or (4) disputing errors with Respondent or the consumer's account-holding financial institution as a result of a Migration Issue or Consent Order Violation. Additionally, Respondent shall provide Cash Redress of \$50 to harmed Affected Consumers who provide reasonable documentation that they dedicated more than one hour related to amending a tax return, correcting a credit report, filing an error dispute with their account-holding institution or other payment provider, or disputing an error with Respondent.
- d. In addition to the Redress required by paragraph 79, Respondent shall provide as additional redress \$25 to each harmed Affected Consumer provided redress pursuant to the following sub-sections:
- i. paragraph 79(b) (Overstated Minimum Payment Amount);

- ii. paragraph 79(c) (Understated Minimum Payment Amount);
  - iii. paragraph 79(d) (Incorrect Higher Interest Rate), to the extent any harmed Affected Consumer received billing statements that overstated the minimum payment amount due;
  - iv. paragraph 79(f) (Unauthorized Withdrawal of Payment or Unauthorized Withdrawal of Amount Too High); or
  - v. paragraph 79(g) (Withdrawal of Payment Amount Too Low).
81. After completing the approved Redress Plan for harmed Affected Consumers identified by December 31, 2021, if the amount of redress provided to Affected Consumers is less than the \$10 million required by paragraph 77, within 30 days of the completion of the Redress Plan, Respondent 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 Consumers and \$10 million. Notwithstanding this provision, Respondent shall continue to provide redress consistent with this

Consent Order and the approved Redress Plan to any newly identified harmed Affected Consumers.

82. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
83. Within 90 days of the Effective Date, Respondent 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 direct Respondent to revise it. If the Regional Director directs Respondent to revise the Redress Plan, Respondent must revise and resubmit the Redress Plan to the Regional Director within 30 days. After receiving notification that the Regional Director has made a determination of non-objection to the Redress Plan, Respondent must implement and

adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan,

84. The Redress Plan must:

- a. Specify the methodology Respondent has used or will use to:
  - i. identify all harmed Affected Consumers;
  - ii. identify the first date the Affected Consumer was affected by a Migration Issue or Consent Order Violation;
  - iii. identify the last date the Affected Consumer was affected by a Migration Issue or Consent Order Violation;
  - iv. calculate the Cash Redress or Credit Redress due to any harmed Affected Consumer for a Migration Issue or Consent Order Violation; and
  - v. calculate and provide all other redress due under this Consent Order.
- b. Describe Respondent's procedures for issuing and tracking redress to each harmed Affected Consumer, as well as overseeing and auditing Respondent's provision of redress to each harmed Affected Consumer;

- c. Describe the redress that Respondent will provide to each category of harmed Affected Consumers;
- d. Provide that Respondent will send each harmed Affected Consumer an explanatory letter that includes a statement that redress is being provided in accordance with the terms of this Consent Order, states why the harmed Affected Consumer is receiving the letter, and describes the process for submitting a claim pursuant to paragraph 80(c). (Redress Notification Letter).
- e. Provide that Respondent shall not include in any envelope containing a Redress Notification Letter any materials other than the letter, and Cash Redress, as applicable.
- f. Provide an exemplar of each Redress Notification Letter envelope and template;
- g. Provide detailed descriptions and documentation of the redress Respondent performed for each Migration Issue or Consent Order Violation prior to implementing the Redress Plan, and certify that such redress has been effectuated;
- h. Specify timeframes and deadlines for implementing the Redress Plan;

- i. State that Respondent's Board has reviewed and approved the Redress Plan;
  - j. Describe the process Respondent will implement to consider, process, and provide refunds to harmed Affected Consumers who have filed claims pursuant to paragraph 80(c), including any documentation Respondent will require from harmed Affected Consumers in support of a claim; and
  - k. Provide that Respondent will pay all costs of administering redress as required by this Order.
85. After Respondent has completed administration of the Redress Plan, as described in paragraph 84, Respondent shall submit a report to the Regional Director, and identify the amount of Cash Redress and Credit Redress provided to harmed Affected Consumers.
86. Respondent may not condition the payment of any redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.

## IX

### **Order to Pay Civil Money Penalty**

**IT IS FURTHER ORDERED** that:

87. Under § 1055(c) of the CFPB, 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 \$25 million to the Bureau.
88. 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.
89. 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).
90. 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.
91. 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.

X

**Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

92. 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.
93. 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.
94. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
95. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent 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 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**

### **XI**

#### **Reporting Requirements**

**IT IS FURTHER ORDERED** that:

96. 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.
97. 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. 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
  - c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
98. Respondent must report any change in the information required to be submitted under paragraph 97 above at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
99. As will be more particularly described in the approved Compliance Plan, Respondent must report to the Bureau any (i) student loan servicing misstatements, including those relating to minimum amount due and annual interest paid, (ii) potential violations of federal consumer financial law relating to misstatements of the minimum amount due, annual interest paid, or other material information

relating to student loan servicing, and (iii) potential violations of this Consent Order, within 30 days of the date the issue is reported to the Board pursuant to paragraph 76(b).

100. Six months after the Effective Date and every six months thereafter for five years from the Effective Date, Respondent must submit a compliance report (Compliance Report) to the Regional Director, sworn under penalty of perjury. The Compliance Report must, at a minimum:
  - a. identify the primary, physical, postal, and email address and telephone number, as designated points of contact which representatives of the Bureau may use to communicate with Respondent;
  - b. List each applicable paragraph and subparagraph of the Order and describe in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order, including detailed steps for addressing each action required by the Consent Order; and
  - c. describe all other actions Respondent has taken under the Redress Plan and Compliance Plan.

101. Beginning five years after the Effective Date, Respondent shall provide the Compliance Report to the Bureau on an annual basis until termination of this Consent Order.

## XII

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that:

102. Within 7 days of the Effective Date, Respondent must submit to the Regional Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
103. 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.
104. For 10 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 XI, 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 related to the subject matter of the Consent Order.

105. 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.
106. Within 90 days of the Effective Date, Respondent must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under paragraphs 103-104 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under paragraph 105.

### XIII

#### Recordkeeping

**IT IS FURTHER ORDERED** that:

107. Respondent must create and retain 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 Plan, described in Section VIII above, including, without limitation, for each individual harmed Affected Consumer: the consumer's name, address, phone number, email address (where applicable), the amount of redress, the date of redress, the names of Affected Consumers who filed claims pursuant to paragraph 80(c), the type of claim filed, the amount of the claim, the amount paid on the claim, and the date the claim was paid.
- c. copies of all scripts, training materials, letters, emails, call recordings, or other communications, including documents sufficient to demonstrate the experience of consumers on each materially different version of Respondent's online billing center, and including any such materials used by a third party on Respondent's behalf;
- d. all consumer complaints and claims filed about redress provided pursuant to the Redress Plan (whether received directly or indirectly, such as through a third party), and any responses to those complaints or claims;

- e. Records showing, for each service provider providing services to Respondent related to student loan servicing, 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 for the service provider.
108. Respondent must make the documents identified in paragraph 107 available to the Bureau upon the Bureau's request.

## XIV

### Notices

**IT IS FURTHER ORDERED** that:

109. 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* Discover Bank, File No. 2020-BCFP-0026," and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement\_Compliance@cfpb.gov:
- Regional Director, Midwest Region  
Consumer Financial Protection Bureau  
230 South Dearborn Street  
Suite 1590  
Chicago, IL 60604

**XV**

**Cooperation with the Bureau**

**IT IS FURTHER ORDERED** that:

110. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

**XVI**

**Compliance Monitoring**

**IT IS FURTHER ORDERED** that:

111. 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.
112. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
113. 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.

114. 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.

## XVII

### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

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

## ADMINISTRATIVE PROVISIONS

### XVIII

**IT IS FURTHER ORDERED** that:

117. 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 118. 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.
118. 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.

119. 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.
120. This Consent Order will terminate 10 years from the Effective Date or 10 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.
121. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

122. 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.
123. 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.
124. 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.

125. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 21<sup>st</sup> day of December, 2020.

  
Kathleen L. Kraninger  
Director  
Bureau of Consumer Financial  
Protection