

UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING  
File No. 2013-CFPB-0012

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In the Matter of )  
AMERICAN EXPRESS BANK, FSB ) CONSENT ORDER  
SALT LAKE CITY, UTAH )  
)

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The Consumer Financial Protection Bureau (“CFPB”) has reviewed the practices of Respondent American Express Bank, FSB (“AEBFSB” or “the Bank”) relating to certain credit card add-on products and has identified violations of law. Under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (“CFP Act”), the CFPB hereby issues, pursuant to 12 U.S.C. §§ 5563 and 5565, this Consent Order (“Order”).

**I.**

**OVERVIEW**

1. The CFPB finds that AEBFSB has engaged in violations of sections 1031 and 1036 of the CFP Act, 12 U.S.C. §§ 5531 and 5536, for deceptive and unfair marketing practices related to certain credit card add-on products, and violations of Regulation V, 12 C.F.R. § 1022.138(b)(7), for failing to provide the mandatory disclosure related to free credit reports.

**II.**

**JURISDICTION**

2. The CFPB has jurisdiction over this matter pursuant to sections 1053 and 1055 of the CFP Act, 12 U.S.C. §§ 5563, 5565.

**III.**

**STIPULATION**

3. AEBFSB has executed a “Stipulation and Consent to the Issuance of a Consent Order” (“Stipulation”), which is incorporated by reference and is accepted by the CFPB. By this Stipulation, AEBFSB has consented to the issuance of this Order by the CFPB pursuant to sections 1053 and 1055 of the CFP Act, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of findings of fact or violations of law, except that AEBFSB admits the CFPB’s jurisdiction over AEBFSB and the subject matter of this action.

**IV.**

**DEFINITIONS**

4. For purposes of this Order, the following definitions shall apply:

- (a) “Account Protector” shall mean the Account Protector program, a debt cancellation credit card add-on product that AEBFSB marketed and sold to Card Members from 2004 – July 2012 that allowed Card Members to request benefit payments toward their minimum balances following certain life events, including but not limited to unemployment, disability, and other events.
- (b) “Board” shall mean AEBFSB’s duly elected and acting Board of Directors.
- (c) “Card” shall mean any consumer charge card or credit card issued by AEBFSB.
- (d) “Card Member” shall mean any consumer who has applied or applies for, and received or receives an AEBFSB consumer charge card or credit card.

- (e) “Credit Card Add-on Products” or “CCAO Products” shall mean any fee-based or no-charge products or services AEBFSB markets or offers to Card Members as an add-on to a Card and that are supplementary to the credit provided by the Card, including but not limited to Account Protector and ID Protection Products.
- (f) “Effective Date” shall mean the date on which this Order is issued.
- (g) “ID Protection Products” shall mean “ID Protect” and “ID Protect Premium,” that AEBFSB marketed or sold to Card Members from November 2009 until July 2012, and shall include Single Identity – the predecessor to ID Protect – that provided consumers with reports, updates or monitoring of information appearing online and information reported to a credit reporting agency. The ID Protection Premium also provided access to a one-time triple-bureau credit report and triple-bureau credit monitoring.
- (h) “Regional Director” shall mean the Regional Director for the West Region for the Office of Supervision for the Consumer Financial Protection Bureau.
- (i) “Sections 1031 and 1036” shall mean sections 1031 and 1036 of the CFP Act, 12 U.S.C. §§ 5531 and 5536.
- (j) “Service Provider” shall have the same meaning as set forth in section 1002(26) of the CFP Act, 12 U.S.C. § 5481.

V.

**CFPB FINDINGS AND CONCLUSIONS**

The CFPB finds the following:

5. AEBFSB 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. With respect to the marketing of Account Protector and ID Protection Products, AEBFSB’s compliance monitoring, Service Provider management, and quality assurance resulted in ineffective oversight, which failed to prevent, identify, or correct certain improper practices.

**Account Protector**

8. AEBFSB marketed Account Protector as a means for a Card Member to pay the minimum payment due on the Card Member’s account following certain life events.
9. A Card Member enrolled in Account Protector paid a monthly fee of 0.85 percent of the Card Member’s balance as of the statement closing date.
10. The Account Protector benefit payment amount was the lesser of \$500 or 2.5% of the Card Member’s account balance as of the date of the qualifying event. A given benefit payment could be less than a Card Member’s minimum monthly payment, requiring the Card Member to pay any difference between the benefit payment and minimum payment. For a significant percentage of Card Members enrolled in Account Protector who received benefits, the benefit payment did not always cover the minimum payment due on the Card Member’s account.
11. A Card Member enrolled in Account Protector who submitted a benefit claim that was approved received a payment toward the Card Member’s minimum payment due each

month for the duration of the benefit period. Benefit periods varied based on the nature of the qualifying event:

- a. Card Members with approved claims for hospitalization or starting college received the benefit payment for one month;
- b. Card Members with approved claims for marriage, birth or adoption of children, home purchase, call to active military duty, relocation, loss of spouse, or divorce received the benefit payment each month for two months;
- c. Card Members with approved claims for a leave of absence from their place of employment received the benefit payment each month for up to three months; and
- d. Card Members with approved claims for involuntary unemployment or disability received the benefit payment each month for up to 24 months.

12. A Card Member who was unemployed or disabled at the time of enrollment was not eligible for a benefit payment due to unemployment or disability existing at the time of enrollment.

13. With respect to Account Protector, the improper outbound telemarketing practices included, but were not limited to, the following examples:

- (a) Representing that the benefit payment amount would cover the Card Member's minimum payment due when, in fact, the benefit payment would be 2.5% of a Card Member's outstanding balance on the date of the qualifying event, up to \$500 which frequently did not equal the minimum payment due;
- (b) Implying that benefits would last up to 24 months when, in fact, only two of the thirteen qualifying events with a benefit period covered by Account

Protector included benefit periods of 24 months, and the other eleven qualifying events had benefit periods of only one, two, or three months;

- (c) Representing that there would be no fee if the balance in the account was paid off, without disclosing that the account balance had to be paid off before the end of the billing cycle, a date that always preceded the statement due date;
- (d) Disclosing on telemarketing calls that there would be no fee for balances under \$100 when, in fact, the fee for Account Protector is 0.85 percent of the Card Member's balance;
- (e) Failing to disclose near the outset of the call that Account Protector was optional and not required for the Card Member to activate or use the Card Member's account;
- (f) Representing that Account Protector would improve or maintain a Card Member's credit score; and
- (g) Implying that benefits would be immediately available when there was a claims process that had to be completed before any benefits were paid.

14. Section 1036(a)(1)(B) of the CFP Act prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).

15. Statements and omissions by AEBFSB or its Service Providers, as set forth in the preceding Paragraphs, are material because they are likely to affect a consumer's choice or conduct regarding Account Protector and are likely to mislead consumers acting reasonably under the circumstances.

16. AEBFSB's representations constitute deceptive acts or practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFP Act, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). These

violations affected over 71,000 Card Members in the amount of at least \$15.1 million in fees and over-limit charges, as well as associated interest fees.

17. Therefore, by reason of the foregoing, AEBFSB, through its Service Providers, engaged in deceptive acts or practices in violation of section 1036(a)(1)(B), 12 U.S.C. § 5536(a)(1)(B).

#### **ID Protection Products**

18. AEBFSB marketed the ID Protection Products as protection against identity theft for Card Members. AEBFSB, in its offering for sale and sale of ID Protection Premium represented that in exchange for a monthly fee, AEBFSB, through its Service Providers, would provide features that included a service to monitor Card Members' credit information.

19. The ID Protection Products had a two-step enrollment process. Following enrollment, an enrolled Card Member was sent a welcome kit that included additional information concerning the ID Protection Products. Included in the welcome kit was the first notice that additional information was required to fully-activate credit monitoring and public records monitoring benefits. Until a Card Member submitted the additional information to AEBFSB, the Card Member would not receive the full benefit of ID Protection Products.

20. AEBFSB did not inform Card Members during the telemarketing or enrollment processes that enrollment was a two-step process. AEBFSB billed Card Members the full amount for ID Protection Products whether or not the Card Member completed the second step.

21. Approximately 85 percent of Card Members who enrolled in the ID Protection Products did not complete the second step of the two-step process and paid the full product fee without receiving all of the advertised benefits.

22. With respect to the ID Protection Products, the improper practices included, but were not limited to, the following examples:

- (a) Using a two-step enrollment process in which Card Members enrolled in ID Protection Products and were billed upon enrollment, but in which AEBFSB failed to inform Card Members that they would not receive the full benefit of the ID Protection Products until they provided additional information to AEBFSB; and
- (b) In some cases, failing to provide the mandatory disclosure under Regulation V regarding free credit reports to some Card Members.

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

24. AEBFSB’s acceptance of monthly payments while failing to provide credit monitoring services has resulted in substantial injury to over 26,000 Card Members in the amount of at least \$3.5 million in fees and over-limit charges, as well as associated interest fees. This injury was not reasonably avoidable by consumers and is not outweighed by any countervailing benefit to the consumers or to competition.

25. Therefore, by reason of the foregoing billing practices for its ID Protection Products as set forth in the preceding paragraphs, AEBFSB, through its Service Providers, engaged in unfair acts and practices in violation of section 1036(a)(1)(B), 12 U.S.C. § 5536(a)(1)(B).

26. When telemarketing sales calls are made that include offers of free credit reports, Regulation V requires that the call include at the first mention of a free credit report the following disclosure: “The following notice is required by law. You have the right to a free

credit report from AnnualCreditReport.com or (877) 322-8228, the only authorized source under Federal law.” 12 C.F.R. § 1022.138(b)(7).

27. In some solicitations, AEBFSB’s outbound telemarketing enrollments in certain ID Protection Products offered a complimentary “trial period” of 30 days before the Card Member incurred product fees. AEBFSB did not make the required disclosure under Regulation V in certain calls.

28. Therefore, by reason of the foregoing sales practices, AEBFSB violated Regulation V and the Fair Credit Reporting Act. 12 C.F.R. § 1022.138(b)(7).

## VI.

### **CORRECTIONS OF VIOLATIONS OF LAWS**

IT IS HEREBY ORDERED that AEBFSB, its officers, agents, servants and employees immediately cease and desist, and that AEBFSB manage its business relationships with Service Providers in a manner that ensures that its Service Providers immediately cease and desist from engaging in violations of Sections 1031 and 1036 in connection with the marketing, sales, and administration of Account Protector and ID Protection Products and from engaging in violations of Regulation V in connection with the marketing, sales, and administration of ID Protection Products, and it is further ordered that AEBFSB take affirmative actions as of the Effective Date, unless otherwise specified, as follows:

29. AEBFSB shall correct all violations of law, as described herein, and shall implement procedures to prevent their recurrence. AEBFSB’s actions as required by this paragraph shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

30. AEBFSB, whether acting directly or through its Service Providers, shall cease and desist from any marketing or solicitation of Account Protector or ID Protection Products until it has submitted a compliance plan, specifically designed to eliminate all violations of Sections 1031 and 1036 and Regulation V in the marketing, sales, and administration of these products to the Regional Director for non-objection (the “Compliance Plan”). This Compliance Plan shall be designed to comply with all provisions of this Order. Within 30 days from the Effective Date, AEBFSB shall confirm with the Regional Director that it has withdrawn or suspended any marketing or solicitation of Account Protector and ID Protection Products.

**Correct Deceptive Marketing of Account Protector**

31. AEBFSB shall take all action necessary to eliminate all deceptive acts and practices in violation of Sections 1031 and 1036 with respect to Account Protector. In addition, AEBFSB shall take all necessary steps to effect and maintain future compliance with Sections 1031 and 1036 when marketing or selling Account Protector, as described more particularly herein.

32. AEBFSB, its Service Providers, or its representatives shall not make, or allow to be made, any deceptive representations, or allow to be made, any deceptive representations, statements, or omissions, expressly or by implication, in the marketing materials, telemarketing scripts and/or sales presentations used to solicit any Card Member or prospective Card Member to enroll in Account Protector, including but not limited to misrepresentations as to the following:

- (a) Any and all fees, costs, expenses and charges associated with Account Protector;

- (b) That Account Protector is optional and not required for the Card Member to activate or use his or her Card;
- (c) That Account Protector will improve or maintain a Card Member's credit score;
- (d) That Account Protector will cover a Card Member's minimum balance,
- (e) The timing of and mechanism for calculating a Card Member's benefit amount available when the Card Member uses Account Protector;
- (f) Payment terms for Account Protector, including the date AEBFSB will use to calculate any fee incurred for Account Protector;
- (g) The length of the benefit period, including that most qualifying events carry a benefit period of one, two, or three months; and
- (h) Any material conditions, benefits and restrictions related to Account Protector.

**Correct Unfair Practices Relating to ID Protection Products**

33. AEBFSB shall take all action necessary to eliminate all unfair acts and practices in violation of Sections 1031 and 1036 with respect to the ID Protection Products. In addition, AEBFSB shall take all necessary steps to effect and maintain future compliance with Sections 1031 and 1036 when marketing, selling, or administering the ID Protection Products, as described more particularly herein.

34. AEBFSB, whether acting directly or through its Service Providers, shall disclose to Card Members during telemarketing solicitations the specific terms and features of the ID Protection Products.

35. AEBFSB shall not charge Card Members for the ID Protection Products until the Card Members complete the steps necessary to receive the full benefits of the products.

**Correct Regulation V Violations in Marketing Practices**

36. AEBFSB shall take all action necessary to make all required disclosures in telemarketing sales calls that include offers of a free credit report in compliance with Regulation V. In addition, AEBFSB shall take all necessary steps to effect and maintain future compliance with Regulation V when marketing or selling ID Protection Products as described more particularly herein.

37. If AEBFSB continues to offer ID Protection Products that include a free credit report, or offers to Card Members at some time in the future the products or any similar products that include a free credit report, AEBFSB shall disclose to card members during telemarketing solicitations a disclosure consistent with the requirements of Regulation V, 12 C.F.R. § 1022.138(b)(7).

**VII.**

**COMPREHENSIVE CREDIT CARD ADD-ON PRODUCT REVIEW**

IT IS FURTHER ORDERED that AEBFSB take additional affirmative actions as follows:

**Independent Third Party Review**

38. Within 30 days from the Effective Date, AEBFSB shall submit to the Regional Director for non-objection the name and qualifications of an independent third party (“Add-On Review Consultant”) who possesses the appropriate expertise and qualifications to review all Credit Card Add-on Products offered by AEBFSB. At a minimum, the Add-on Review Consultant shall:

- (a) Review and assess all CCAO Products, with the exception of Account Protector and ID Protection Products, for compliance with Sections 1031 and 1036 and all other applicable Federal consumer financial laws; and
- (b) Provide to the Board a detailed written report containing its analysis, assessments, and recommendations, which the Board shall review within 60 days of receipt. This review shall be recorded and noted in the Board minutes.

39. Within 30 days from the receipt of non-objection by the Regional Director of the selection of the Add-On Review Consultant, the Bank shall develop, in consultation with the Add-On Review Consultant, and submit to the Regional Director for non-objection, a CCAO Product review schedule that shall include, at a minimum:

- (a) A list grouping all CCAO products to be reviewed with a prioritized review schedule;
- (b) The date by which the review will be, or has been, completed for each CCAO product; and
- (c) The date that the final written reports will be, or have been, completed for all CCAO products.

40. AEBFSB shall, within 15 days of the Board's review of the Add-On Review Consultant's report, provide the Regional Director with a copy of the report.

41. If any report provided by the Add-On Review Consultant identifies any issues regarding compliance with Sections 1031 and 1036 or any other applicable Federal consumer financial law, AEBFSB shall:

- (a) Within 120 days of receiving the Add-On Review Consultant's report, submit a remediation plan to the Regional Director for non-objection prior to implementation; and
- (b) Within 120 days of receiving the Add-On Review Consultant's report, submit to the Regional Director for non-objection an implementation plan for corrective measures to address any issues contained in the Add-On Review Consultant's report utilizing the Compliance Program and CMS established in accordance with the October 1, 2012, Consent Order issued by the CFPB, In the Matter of AMERICAN EXPRESS BANK, FSB, SALT LAKE CITY, UTAH, Docket Number 2012-CFPB-0003 (Oct. 1, 2012) ("October 2012 Consent Order").

42. AEBFSB shall develop and implement a record-keeping system and internal audit procedures that are reasonable designed to allow the CFPB to:

- (a) Review and monitor AEBFSB's practices relating to the CCAO Products; and
- (b) Confirm that AEBFSB is in compliance with this Order and all Federal consumer financial laws, including Sections 1031 and 1036.

## VIII.

### **ORDER FOR RESTITUTION**

#### **Payment Floor**

43. AEBFSB shall provide restitution in an amount not less than \$18,600,000, less any restitution made by the Bank prior to the Effective Date of this Order that complies with the requirements of this Order ("Payment Floor"), for the purpose of providing restitution as required by this Section. If AEBFSB claims to have made any restitution prior to the Effective

Date of this Order that complies with the requirements of this Order, the Bank shall provide appropriate proof of such restitution to the Regional Director within 30 days of the Effective Date.

44. AEBFSB shall make all restitution required by this Order, regardless of whether the total of such restitution exceeds the Payment Floor.

45. Upon completion of all restitution required by this Order, if the amount of restitution made is less than the Payment Floor, within 30 days of the Bureau's non-objection to the Restitution Report pursuant to Paragraph 65, AEBFSB is ordered to pay to the Bureau, in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau, the difference between the amount of restitution provided and the Payment Floor.

46. Any funds paid to the CFPB under Paragraph 45 shall be deposited in the U.S. Treasury as disgorgement.

47. If the Bank has provided restitution to a Card Member pursuant to the order issued on December 19, 2013 by the Office of the Comptroller of the Currency, then this Order shall not be construed as requiring the Bank to provide a duplicate restitution payment to that Card Member. The Bank shall provide appropriate proof of such restitution to the Regional Director.

#### **Restitution Plan for Eligible Consumers**

48. For purposes of this restitution, the following definitions shall apply:

(a) Account Protector Eligible Consumers are defined as all Card Members who were subject to the deceptive pricing claims and who did not receive

the benefit of the product as the Bank marketed it. Account Protector Eligible Consumers fall into one or more of three groups:

1. Card Members who bought Account Protector through inbound or outbound telemarketing (“Telemarketing Account Protector Eligible Consumers”);
  2. Card Members who received a benefit payment that was not sufficient to meet the minimum payment due in the billing cycle in which the payment was received, regardless of the sales channel (“Min Due Account Protector Eligible Consumers”); and
  3. Card members who were denied certain benefits because the Card Member’s life event experienced while enrolled in Account Protector began prior to the time of enrollment (“Denied Account Protector Eligible Consumers”).
- (b) ID Protection Eligible Consumers are defined as all Card Members who purchased ID Protect and ID Protect Premium.
- (c) Eligible Consumers are defined as all Account Protector Eligible Consumers and ID Protection Eligible Consumers.

49. Within 90 days after the Effective Date, the Bank shall submit a Restitution Plan (the “Restitution Plan”), including samples of letters or other communications sent or to be sent to consumers, to the Regional Director for non-objection.

50. With respect to Account Protector Eligible Consumers, the Restitution Plan shall, at a minimum, require the Bank to:

- (a) Refund program fees to Telemarketing Account Protector Eligible Consumers as follows:
1. for those Telemarketing Account Protector Eligible Consumers who were enrolled in Account Protector for less than twelve months, a full refund of all program fees plus at least 1.3% interest calculated from the date the fees were charged until the date of reimbursement, less any benefit payment the Card Member received during that enrollment; and
  2. for Telemarketing Account Protector Eligible Consumers who were enrolled in Account Protector for twelve months or more, restitution equivalent to twelve months of the Card Member's average program fees plus at least 1.3% interest calculated from the date the fees were charged until the date of reimbursement, less any benefit payment the Card Member received during that enrollment.
- (b) Provide restitution to Min Due Account Protector Eligible Consumers. The restitution shall be the difference between the benefit payment the Card Member received and an amount equal to at least the minimum payment due, any applicable finance charges, late fees, and over-limit fees plus at least 1.3% interest calculated from the date the finance charges and fees were charged until the date of reimbursement. Restitution shall include removing any penalty APR triggered as the

result of the benefit payment being insufficient to meet the minimum payment due.

(c) Provide restitution to Denied Account Protector Eligible Consumers.

The restitution shall be the benefit payment amount the Card Member would have received (or the minimum due each relevant billing cycle, if greater), had the Card Member's benefit request not been denied, for the maximum benefit period for each event, including any applicable finance charges, late fees, and over-limit fees plus at least 1.3% interest calculated from the date the finance charges and fees were charged until the date of reimbursement. Restitution shall include removing any penalty APR triggered as the result of the benefit payment being insufficient to meet the minimum payment due.

51. With respect to ID Protection Eligible Consumers, the Restitution Plan shall, at a minimum, require the Bank to provide full restitution of fees, including any applicable finance charges and over-limit fees, plus at least 1.3% interest calculated from the date fees were charged until the date of reimbursement.

52. The Restitution Plan shall provide for processes covering all Eligible Consumers regardless of their current account status with the Bank, including open accounts, closed accounts with and without a balance, and charged-off accounts. The process shall include the following requirements:

(a) For any open credit card account (including inactive accounts), the Bank shall deliver a statement credit to the account and/or otherwise send a check;

- (b) For any closed credit card account, the Bank shall decrease the account balance (if any) by the amount of the redress, and where the redress is greater than the existing account balance, mail to the Eligible Consumer a check in the amount of the excess;
- (c) For any charged-off account, the Bank shall decrease the charged-off balance by the amount of redress, and where the refund is greater than the existing charged-off balance, the Bank shall mail to the Eligible Consumer a check in the amount of the excess;
- (d) If the account holder is deceased, and the balance is greater than the refund, the Bank shall provide a statement credit to the account, and otherwise a refund check for the remaining refund shall be sent in accordance with applicable law; and
- (e) With respect to any bankruptcy, estate, accounts in litigation and sold charged-off accounts, the Bank shall make the refund in accordance with applicable law.

53. Within 180 days of receipt of non-objection from the Regional Director, the Bank shall implement the Restitution Plan. Restitution provided by the Bank shall not limit consumers' rights in any way.

54. The Bank shall retain for seven years all records pertaining to the Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the Eligible Consumers; the names, contact, and account information of the Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

### **Review of Restitution Plan**

55. Prior to submission to the Regional Director, the Restitution Plan shall be reviewed by the Compliance Program Consultant retained pursuant to paragraph 16 of the October 2012 Consent Order or another independent third party capable of conducting this review that is acceptable to the Regional Director.

### **Mailing Refunds**

56. Within 90 days from the Effective Date, AEBFSB shall submit to the Regional Director for review a plan for mailing refunds, including the proposed text of letters or other communications that have been sent or shall be sent to Eligible Consumers regarding restitution checks or account credits. For letters sent on or after the Effective Date of the Order, the letters shall include satisfactory language explaining the reason AEBFSB is sending a restitution check or crediting an account, including that AEBFSB is sending the check or crediting an account as the result of an enforcement action by the CFPB. Any letters or other communications sent after the Effective Date of this Order shall also include reference to and the web address for any CFPB press releases related to this Order. AEBFSB shall then address any comments of the Regional Director, making such changes as may be required to the proposed letters. The letters, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by mail to all Eligible Consumers entitled to receive restitution checks and/or credits to their accounts in accordance with this Order.

57. When AEBFSB makes cash restitution by check made payable to any consumer receiving restitution under this Order (“Eligible Consumer”), AEBFSB shall send the check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer’s last address as maintained by AEBFSB’s records. AEBFSB shall make reasonable

attempts to obtain a current address for any Eligible Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the check for any eligible consumer is returned to AEBFSB after such second mailing by AEBFSB, or if a current mailing address cannot be identified using standard address search methodologies, AEBFSB shall retain the restitution amount of such Eligible Consumer for a period of three-hundred sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Eligible Consumer upon appropriate proof of identity. After such time these monies shall be disposed of in accordance with the Restitution Plan.

**Engagement of Independent Accounting Firm**

58. AEBFSB shall utilize, at its own expense, the services of the independent certified accounting firm (“Firm”) retained as part of the October 2012 Consent Order, or within 15 days after the Regional Director’s non-objection pursuant to Paragraph 59, retain, at its own expense, a different Firm acceptable to the Regional Director to determine compliance with the Restitution Plans. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements.

59. If AEBFSB elects to engage a different Firm, prior to engagement, and no later than 60 days from the Effective Date, AEBFSB shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Regional Director for non-objection. If AEBFSB intends to utilize the services of the Firm retained pursuant to the October 2012 Consent Order, no later than 60 days

from the Effective Date, AEBFSB shall submit notification of that intent, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Regional Director for non-objection.

60. The engagement letter between AEBFSB and the Firm shall grant the CFPB access to the Firm's staff, work-papers, and materials prepared in the course of the Firm's engagement and preparation of the reports required by this Order.

61. If AEBFSB elects to engage a different Firm, to be acceptable to the Regional Director, the Firm must be an objective and unaffiliated third party and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy.

62. Within 15 days after submission of the Firm's name, the Regional Director shall notify AEBFSB in writing of the CFPB's objection or non-objection thereto.

63. The Firm shall submit the Restitution Report called for in Paragraph 65 to the Regional Director for non-objection within 90 days after the Bank completes implementation of the Restitution Plan.

#### **Report on Restitution**

64. The Firm shall review and verify that the Bank accurately identified the Eligible Consumers, calculated restitution correctly, and made the appropriate account credits or cash refunds to Eligible Consumers.

65. The Firm shall prepare a detailed written report of its assessment of AEBFSB's compliance with the Restitution Plan ("Restitution Report"). The Restitution Report shall also include the following:

- (a) The processes and procedures by which AEBFSB determined the restitution amounts described in Paragraphs 50 – 51;

- (b) The total number of each such class of Eligible Consumers;
- (c) The total amount of restitution made to each such class of Eligible Consumers under the Restitution Plan; and
- (d) The total amount of interest paid.

**IX.**

**ORDER TO PAY CIVIL MONEY PENALTY**

66. IT IS FURTHER ORDERED that by reason of the violations of law and/or regulations set forth in Section V of this Order, and after taking into account the Stipulation and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3): AEBFSB shall pay civil money penalties of \$2,000,000 to the CFPB, in accordance with section 1017(d) of the CFP Act, 12 U.S.C. § 5497(d), as directed by the CFPB and as set forth herein.

67. Within 10 days of the Effective Date, AEBFSB shall pay the civil money penalty in the form of a wire transfer to the CFPB or to such agent as the CFPB may direct, and in accordance with wiring instructions to be provided by counsel for the CFPB.

68. The civil money penalty paid pursuant to this Order shall be deposited in the Civil Penalty Fund of the CFPB in accordance with section 1017(d) of the CFP Act, 12 U.S.C. § 5497(d).

69. In the event of any default on AEBFSB's obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue on any outstanding amounts not paid from the date of default to the date of payment, and shall immediately become due and payable.

70. AEBFSB shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds shall be returned to AEBFSB.

71. AEBFSB shall treat the civil money penalty as a penalty paid to the government for all purposes. Regardless of how the CFPB ultimately uses those funds, AEBFSB shall not:
- a. Claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any civil money penalty that AEBFSB pays pursuant to this Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil money penalty that AEBFSB pays pursuant to this Order.

**X.**

**NOTIFICATION AND REPORTING REQUIREMENTS**

72. Within 30 days from the end of each calendar quarter following the Effective Date, AEBFSB shall provide a written progress report addressing each provision of this Order and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of this Order to the Regional Director. All progress reports and other written responses to this Order shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and the Bank President. The certification of compliance shall include the following:

- (a) A statement confirming that AEBFSB is in compliance with all provisions of this Order; or
- (b) If AEBFSB is not in compliance with all provisions of this Order, AEBFSB must provide:

- i. A list of the provisions with which AEBFSB is not yet in compliance, an explanation of why AEBFSB is not yet in compliance with each specific provision, and a description of the actions AEBFSB has taken to comply with the provision; and
- ii. A statement as to when AEBFSB will be in full compliance with this Order.

**XI.**

**NOTICES**

73. IT IS FURTHER ORDERED that, unless otherwise directed in writing by the Regional Director, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and shall be sent by overnight courier (not the U.S. Postal Service), as follows:

To the CFPB:  
Regional Director, CFPB Western Region  
Consumer Financial Protection Bureau  
301 Howard Street  
Suite 1200  
San Francisco, CA 94105

The subject line shall include the Docket Number and shall begin: In re American Express Bank, FSB.

74. Provided however that AEBFSB may send such reports or notifications by first-class mail, but only if AEBFSB contemporaneously sends an electronic version of such report or notification to: [Enforcement\\_Compliance@cfpb.gov](mailto:Enforcement_Compliance@cfpb.gov).

**XII.**

**COMPLIANCE AND EXTENSIONS OF TIME**

75. IT IS FURTHER ORDERED that, upon a written showing of good cause, the Regional Director may, in his/her discretion, modify any non-material provisions of this Order (e.g., reasonable extensions of time). Any such modification by the Regional Director shall be in writing.

### XIII.

#### ADMINISTRATIVE PROVISIONS

76. Except as set forth in Paragraph 80, the provisions of this Order shall not bar, estop or otherwise prevent the CFPB or any other federal or state agency or department from taking any other action against AEBFSB.

77. This Order is intended to be, and shall be construed to be, a final order issued pursuant to section 1053 of the CFP Act, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the CFPB or the United States.

78. This Order shall be effective on the date of issuance.

79. Calculation of time limitations for compliance with the terms of this Order shall be based on calendar days, unless otherwise noted.

80. This Order constitutes a settlement of the administrative proceeding against the Bank contemplated by the CFPB, based on the conduct described in the CFPB Findings and Conclusions set forth in this Order. The CFPB releases and discharges the Bank from all potential liability (other than as set forth in this Order) for a cease and desist or other order or civil money penalty that has been or might have been asserted by the CFPB based on AEBFSB's conduct, as described in the CFPB Findings and Conclusions, to the extent such conduct was known to the CFPB as of the Effective Date. Notwithstanding the foregoing, the practices alleged in this Order may be utilized by the CFPB in future enforcement actions against the Bank.

and its affiliates 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 shall not preclude or affect any right of the CFPB to determine and ensure compliance with the terms and provisions of this Order, or to seek penalties for any violations thereof.

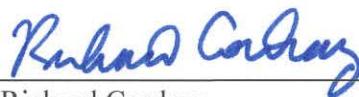
81. The provisions of this Order shall be binding on AEBFSB, its officers, agents, servants, employees, other institution-affiliated parties, and any successors and assigns thereof.

82. The provisions of this Order shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the CFPB.

83. Any violation of this Order may result in the imposition by the CFPB of the maximum amount of civil money penalties allowed under section 1055(c) of the CFP Act, 12 U.S.C. §5565(c).

84. The provisions of this Order shall be enforceable by the CFPB.

Issued this 24<sup>th</sup> day of December, 2013.

  
Richard Cordray  
Director  
Consumer Financial Protection Bureau