

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

ADMINISTRATIVE PROCEEDING File
No. 2020-BCFP- 0007

In the Matter of:

CONSENT ORDER

TD BANK, N.A.

The Bureau of Consumer Financial Protection (Bureau) has reviewed the overdraft and furnishing activities of TD Bank, N.A. (Respondent, as defined below) and has identified the following law violations: failing to obtain consumers' affirmative consent to enroll in Respondent's Debit Card Advance (DCA) overdraft-protection service and subsequently charging those consumers overdraft fees pursuant to that service, in violation of the Electronic Fund Transfer Act (EFTA), 15 U.S.C. § 1693 et seq., and its implementing Regulation E, 12 C.F.R. § 1005.17(b)(1)(iii); abusive acts or practices while offering DCA to consumers in person, in violation of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(d)(1), 5536(a)(1)(B); deceptive acts or practices while offering DCA to consumers in person, over the phone, and through mailed solicitations, in

violation of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B); failing to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of information Respondent furnished to nationwide specialty consumer reporting agencies (NSCRAs), in violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., and its implementing Regulation V, 12 C.F.R. § 1022.42(a) & (b); and failing to conduct timely investigations of indirect disputes concerning NSCRA furnishing, in violation of FCRA, 15 U.S.C. § 1681s-2(b)(2). Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I.

Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565; § 918(a)(5) of EFTA, 15 U.S.C. § 1693o(a)(5); and § 621(b)(1)(H) of FCRA, 15 U.S.C. § 1681s(b)(1)(H).

II.

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated August 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

§§ 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. "Affected Consumers" includes current and former customers of Respondent who:
 - i. opened a consumer-checking account in person, at one of Respondent's stores or offsite account-opening events, between January 1, 2014, through December 31, 2018;
 - ii. enrolled in DCA at account-opening; and
 - iii. were charged non-refunded or non-waived Covered Overdraft Fees through their enrollment in DCA at account-opening.
 - b. "Board" means Respondent's duly-elected and acting Board of Directors.
 - c. "Consumer Reporting Agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of

furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. 15 U.S.C. § 1681a(f).

d. “Covered Overdraft Fees” means fees assessed for paying Covered Transactions.

e. “Covered Transactions” means ATM and one-time debit card transactions that are subject to the requirements in 12 C.F.R. § 1005.17(b).

f. “DCA” means Debit Card Advance, Respondent’s discretionary overdraft-protection service for Covered Transactions.

g. “Direct Dispute” means a dispute submitted directly to a Furnisher by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the Furnisher has or has had with the consumer. 12 C.F.R. § 1022.41(b).

h. “Effective Date” means the date on which the Consent Order is issued.

i. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or her delegate.

- j. “Furnisher” means an entity that furnishes information relating to consumers to one or more Consumer Reporting Agencies for inclusion in a consumer report. 12 C.F.R. § 1022.41(c).
- k. “NSCRA” means, coterminous with the meaning of “nationwide specialty consumer reporting agency” defined in FCRA, 15 U.S.C. § 1681a(x), a Consumer Reporting Agency that compiles and maintains files on consumers on a nationwide basis relating to (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history; or (5) insurance claims.
- l. “Overdraft Fee Period” means the time period beginning when an Affected Consumer incurred a Covered Overdraft Fee and ending at the earlier of (1) the Affected Consumer restoring his or her consumer-checking account to a zero or positive balance or (2) the closure of the Affected Consumer’s account.
- m. “Regional Director” means the Regional Director for the Northeast Region for the Office of Supervision for the Bureau of Consumer Financial Protection, or his or her delegate.
- n. “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.

- o. “Relevant Period” includes from January 1, 2014 to the Effective Date.
- p. “Respondent” means TD Bank, N.A., and its successors and assigns.
- q. “Redress Fees” means all Covered Overdraft Fees Respondent charged Affected Consumers until the earlier of the Affected Consumer’s first unenrollment (if applicable) from DCA or the end of the Affected Consumer’s Redress Period, excluding Covered Overdraft Fees Respondent waived or refunded for the Affected Consumer prior to the Effective Date.
- r. “Redress Period” means:
 - i. for Affected Consumers (1) who unenrolled from DCA at any time, or who stopped using DCA after their first Overdraft Fee Period, and (2) who incurred their first Covered Overdraft Fee between January 1, 2014 and April 1, 2016, the longer of the Affected Consumer’s first Overdraft Fee Period or 30 days from the Affected Consumer’s first Covered Overdraft Fee;
 - ii. for Affected Consumers (1) who unenrolled from DCA at any time, or who stopped using DCA after their first Overdraft Fee Period, and (2) who incurred their first Covered Overdraft Fee

after April 1, 2016, the longer of the Affected Consumer’s first Overdraft Fee Period or seven days from the Affected Consumer’s first Covered Overdraft Fee;

- iii. for Affected Consumers who experienced multiple Overdraft Fee Periods and who never unenrolled from DCA, the longer of the Affected Consumer’s first Overdraft Fee Period or one day from the Affected Consumer’s first Covered Overdraft Fee.

IV.

Bureau Findings and Conclusions

The Bureau finds the following:

- 4. Respondent is a national bank headquartered in Cherry Hill, New Jersey. As of March 31, 2020, Respondent had about \$355 billion in total assets.
- 5. Respondent is an insured depository institution with assets greater than \$10 billion within the meaning of 12 U.S.C. § 5515(a).
- 6. Respondent is a “covered person” under 12 U.S.C. § 5481(6) because it “engages in offering or providing a consumer financial product or service,” including by: (1) engaging in deposit-taking activities for use by consumers primarily for personal, family, or household purposes; (2) offering an overdraft service for Covered Transactions; and (3) furnishing in connection

with that deposit-taking activity. 12 U.S.C. § 5481(6)(A), (15)(A)(iv), & (15)(A)(ix).

7. Respondent is also a “financial institution” under EFTA and Regulation E because it is a national bank holding consumer-deposit accounts. 15 U.S.C. § 1693a(9).
8. Respondent is also a Furnisher under FCRA and Regulation V because it “furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report.” 12 C.F.R. § 1022.41(c).
9. Throughout the Relevant Period, Respondent has offered consumers three overdraft options in connection with their consumer-checking accounts: (1) a “standard” overdraft service, which covers transactions not subject to 12 C.F.R. § 1005.17(b), including checks, automated clearing house (ACH), and recurring debit-card transactions; (2) DCA, which covers Covered Transactions; and (3) a “decline all” option, which opts the customer out of overdraft services for all transaction types.
10. New customers may enroll in DCA when opening a consumer-checking account online or at one of Respondent’s branches (stores). Existing checking-account customers may enroll a new or existing checking account in DCA at one of Respondent’s stores, online, or over the phone.

11. Respondent charges consumers who have enrolled in DCA a \$35 overdraft fee to pay, up to five times per day and at Respondent's discretion, each Covered Transaction that exceeds a consumer's checking account available balance (which accounts for pending debit transactions) by more than \$5.
12. Respondent's consumer-checking accounts come with its "standard" overdraft service, through which Respondent charges consumers a \$35 overdraft fee to pay, at Respondent's discretion, all other transactions (e.g., checks, ACH, and recurring debits) that exceed a consumer's checking account available balance by more than \$5.
13. Consumers who have enrolled in DCA receive overdraft coverage on transactions not subject to 12 C.F.R. § 1005.17(b) through Respondent's "standard" overdraft service, not through their enrollment in DCA.

Findings and Conclusions as to Respondent's DCA Enrollment Process in Respondent's Stores in Violation of EFTA and Regulation E

14. Under Respondent's store enrollment procedures, Respondent's store employees orally present DCA to new customers who are opening consumer-checking accounts and request those new customers to orally indicate whether they want to enroll following that presentation. Respondent's store employees then document the new customer's oral enrollment preference in Respondent's account-opening computer system.

15. Under Respondent's store enrollment procedures, Respondent's store employees do not print and present new customers with a written overdraft notice (DCA Form) until the end of the account-opening process.
16. The printed DCA Form that Respondent's store employees present to new customers is pre-marked with a checked box to reflect the customer's oral enrollment preference from earlier in the account-opening process. Respondent's employees print the Form with the "Enrolled in TD Debit Card Advance" option selected for consumers who stated they want DCA. Respondent prints the Form with the "Not Enrolled in TD Debit Card Advance" option selected for consumers who stated they did not want DCA.
17. Under Respondent's store procedures, through December 31, 2018, new customers did not receive written disclosures about Respondent's overdraft services before receiving the DCA Form at the end of the account-opening process.
18. Respondent's store employees present this DCA Form together with Respondent's account-opening authorization form. New customers must sign both forms to complete the account-opening process.
19. The DCA Form and account-opening authorization form are pre-filled by Respondent's computer system with all relevant customer and account information.

20. Since January 27, 2014, it has been Respondent's policy that a new customer must sign both a DCA Form indicating whether the customer is enrolling and an account-opening authorization form in order to open a consumer-checking account regardless of whether the customer enrolls in DCA.
21. Under Regulation E, a financial institution may not charge Covered Overdraft Fees unless it first “[o]btains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions.” 12 C.F.R. § 1005.17(b)(1)(iii).
22. A financial institution must provide a consumer with the written (or, if the consumer agrees, electronic) notice required by 12 C.F.R. § 1005.17(b)(1)(i) before it can obtain that consumer's affirmative consent as required by 12 C.F.R. § 1005.17(b)(1)(iii).
23. As described in paragraphs 14-18 above, through December 31, 2018, Respondent requested that new customers orally provide their DCA enrollment preference before providing them with written notice describing the DCA service.
24. Respondent does not obtain a new customer's affirmative consent to enroll in DCA through the customer's oral enrollment preference when Respondent obtains that oral decision before providing the customer the written notice required by 12 C.F.R. § 1005.17(b)(1)(i).

25. Under Respondent's store procedures, Respondent prints the DCA Form with a pre-checked box indicating the new customer's DCA enrollment decision and presents that Form to the new customer at the end of the account-opening process.
26. By the time Respondent provides new customers with a single DCA Form for their signature in Respondent's stores, the DCA Form is already marked with their enrollment preference.
27. If new customers who previously indicated that they wished to enroll want to amend their enrollment preference after receiving the printed DCA Form, they must affirmatively seek a different version of the DCA Form without their previous enrollment preference pre-marked.
28. Respondent does not obtain a new customer's affirmative consent to enroll in DCA through the customer's signature on a DCA Form that is already marked with the customer's enrollment preference and that all new customers are required to sign to open a consumer-checking account.
29. During the Relevant Period, Respondent charged approximately 1.42 million Affected Consumers Covered Overdraft Fees.
30. As a result, Respondent charged Covered Overdraft Fees without obtaining consumers' affirmative consent to enroll in DCA, in violation of EFTA, 15 U.S.C. § 1693 et seq., and Regulation E, 12 C.F.R. § 1005.17(b)(1)(iii).

Findings and Conclusions as to Respondent's DCA Enrollment Process at Offsite Account-Opening Events in Violation of EFTA and Regulation E

31. Respondent's employees also open consumer-checking accounts at events held outside of Respondent's stores, including at local colleges or businesses.
32. For these offsite account-opening events, Respondent uses a different account-opening authorization form that consumers must sign to open a new checking account.
33. Respondent's offsite account-opening authorization form features a box to check to enroll in DCA, along with additional customer-information fields and certain terms and conditions for Respondent's checking accounts. This form does not disclose any information regarding DCA.
34. For offsite account-opening events, Respondent's employees are also required to bring DCA Forms for all new customers to sign.
35. But before early 2015, Respondent's employees often did not bring the DCA Form to offsite account-opening events.
36. Even after early 2015, Respondent's employees in some cases still failed to bring the DCA Form to offsite account-opening events.
37. When Respondent's employees failed to bring the DCA Form to offsite account-opening events, Respondent still opened consumer-checking accounts and enrolled new customers in DCA following those events.

38. When Respondent's employees failed to bring the DCA Form to offsite account-opening events, Respondent obtained consumers' DCA enrollment decisions without providing customers with the DCA Form for their signature and before providing them with any written disclosure describing DCA.
39. In early 2015, Respondent instructed employees at offsite account-opening events to elicit an oral enrollment preference from a new customer and then to fill out the DCA Form on behalf of the new customer—including marking the new customer's DCA enrollment preference—before later providing the customer the DCA Form for their signature.
40. Following offsite account-opening events, Respondent's employees use the consumer information captured in the offsite account-opening form and DCA Form to open new checking accounts for the new customers who attended those events.
41. Under Regulation E, a financial institution may not charge Covered Overdraft Fees unless it first “[o]btains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions.” 12 C.F.R. § 1005.17(b)(1)(iii).

42. A financial institution must provide a consumer with the notice required by 12 C.F.R. § 1005.17(b)(1)(i) before it can obtain that consumer's affirmative consent as required by 12 C.F.R. § 1005.17(b)(1)(iii).
43. Respondent instructed its employees to fill out DCA Forms on behalf of new customers at offsite account-opening events—including marking a new customer's oral DCA enrollment preference—before presenting the DCA Form to new customers for their signature.
44. Respondent does not obtain a new customer's affirmative consent to enroll in DCA through the customer's oral enrollment preference, because Respondent does not provide the customer the written notice required by 12 C.F.R. § 1005.17(b)(1)(i) before obtaining that oral decision.
45. Respondent directed its employees to complete the DCA Form with the customer's information and selected enrollment option. This meant that by the time Respondent's employees presented new customers with a DCA Form for their signature at offsite account-opening events, that DCA Form had been marked with their enrollment preference.
46. Respondent does not obtain a new customer's affirmative consent to enroll in DCA through the customer's signature on a DCA Form that is already marked with the customer's enrollment preference and that all new customers are required to sign to open a consumer-checking account.

47. Respondent's employees also failed to bring DCA Forms to offsite account-opening events to present to new customers for their signature, but still enrolled customers in DCA at these events.
48. When Respondent's employees failed to bring DCA Forms to offsite account-opening events, they obtained new customers' DCA enrollment decisions without providing them with Respondent's DCA Form for their signature and before providing them with any other written disclosure describing DCA.
49. Respondent charged new customers who enrolled in DCA at offsite account-opening events Covered Overdraft Fees.
50. As a result, Respondent charged Covered Overdraft Fees without obtaining these consumers' affirmative consent to enroll in DCA, in violation of EFTA, 15 U.S.C. 1693 et seq., and Regulation E, 12 C.F.R. § 1005.17(b)(1)(iii).

**Findings and Conclusions as to Respondent's Abusive Acts or Practices
During the DCA Enrollment Process in Respondent's Stores and at Offsite
Account-Opening Events**

51. Under Respondent's account-opening procedures, Respondent's employees request that new customers orally indicate whether they want to enroll in DCA, based upon the employee's oral presentation of the service, before providing customers with the DCA Form.

52. Respondent did not create a script for store employees to use to present DCA to new customers before requesting their oral enrollment decision.
53. Respondent's managers created their own talking points and scripts for Respondent's employees to use to explain DCA to new checking-account customers in the stores they supervised.
54. Respondent's managers instructed employees, for their oral presentation of DCA to new customers, to: (1) present DCA as a "free" service or benefit, while downplaying the fees and disclosures associated with the service; and (2) frame DCA as a "feature" or "package" that "comes with" all new consumer-checking accounts, rather than as an option that new customers must opt in to.
55. In fact, (1) DCA is not a "free" service or benefit; and (2) DCA is not a "feature" of Respondent's checking accounts and does not "come with" all new consumer-checking accounts.
56. In some cases during the store and offsite account-opening process, Respondent also represented, expressly or by implication, that: (1) enrolling in DCA would allow Respondent to pay transactions—including a mortgage or light bill—likely already covered by Respondent's standard overdraft service; and (2) enrollment in DCA is a default setting required to open a new consumer-checking account.

57. In fact, (1) DCA pays Covered Transactions only, while remaining transactions are covered by Respondent's standard overdraft service; and (2) Respondent does not offer a consumer-checking account for which enrollment in DCA is required.
58. Under Respondent's procedures, Respondent's employees do not provide new customers with a DCA Form for their signature until the end of the account-opening process.
59. The DCA Form that Respondent's employees present to new customers in Respondent's stores and at offsite account-opening events features a pre-checked box reflecting the customer's oral enrollment preference from earlier in the account-opening process.
60. Respondent's employees do not print and present new customers with a DCA Form for their signature until the end of the account-opening process.
61. The DCA Form that Respondent's employees present to new customers in stores and at offsite account-opening events features a pre-checked box reflecting the customer's oral DCA enrollment preference from earlier in the account-opening process.
62. Respondent's employees have also failed to bring DCA Forms to offsite account-opening events to present to new customers for their signature.

63. Through a misleading or incomplete oral presentation of the DCA service for the purpose of eliciting an oral-enrollment decision, and then by not providing new customers with the pre-marked DCA Form until the end of the account-opening process, or not providing the DCA Form at all, Respondent materially interfered with consumers' ability to understand the terms and conditions of DCA.
64. In certain instances, Respondent's employees further materially interfered with consumers' ability to understand the terms and conditions of DCA by: requiring new customers to sign DCA Forms with the "enrolled" option pre-checked without mentioning the DCA service at all; enrolling new customers in DCA without requesting the customer's oral enrollment decision; and deliberately obscuring, or attempting to obscure, the DCA Form to prevent a new customer's review of their pre-marked "enrolled" status.
65. Section 1036(a)(1)(B) of the CFPA prohibits abusive acts or practices. 12 U.S.C. § 5536(a)(1)(B).
66. An act or practice is abusive under the CFPA if it, among other things, "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service." 12 U.S.C. § 5531(d)(1).

67. Respondent's conduct constitutes abusive acts or practices in violation of the CFPB, 12 U.S.C. §§ 5531(d)(1), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Deceptive Acts or Practices During the DCA Enrollment Process in Respondent's Stores and at Offsite Account-Opening Process

68. Section 1036(a)(1)(B) of the CFPB prohibits deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B).
69. As described in Paragraph 54, in connection with the marketing, promoting, offering for sale, or sale of DCA, in numerous instances, Respondent represented, expressly or impliedly, that: (1) DCA is a "free" service or benefit; and (2) DCA is a "feature" or "package" that "comes with" all new consumer-checking accounts.
70. In fact, (1) DCA is not a "free" service or benefit; and (2) DCA is not a "feature" of Respondent's checking accounts and does not "come with" all new consumer-checking accounts.
71. Further, as described in Paragraph 56, in connection with the marketing, promoting, offering for sale, or sale of DCA, Respondent represented, expressly or impliedly, that: (1) enrolling in DCA would allow Respondent to pay transactions—including a mortgage or light bill—likely already covered by Respondent's standard overdraft service; and (2) enrollment in DCA is a default setting required to open a new consumer-checking account.

72. In fact, (1) DCA pays Covered Transactions only, while remaining transactions are covered by Respondent's standard overdraft service; and (2) Respondent does not offer a consumer-checking account for which enrollment in DCA is required. A consumer-checking account does not include DCA unless a consumer chooses to enroll in DCA.
73. Thus, Respondent's representations, as described in Paragraphs 69 and 71 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).

**Findings and Conclusions as to Respondent's Deceptive Acts or Practices
When Presenting DCA to Existing Customers by Phone**

74. Respondent permits consumers who have a checking account with Respondent to enroll a new or existing checking account in DCA over the phone.
75. For existing checking-account customers enrolling in DCA over the phone, Respondent requires its employees to read (or play an automated version of) a scripted disclosure regarding overdraft fees and the transactions covered by DCA when obtaining a consumer's enrollment decision.
76. During phone enrollments, in certain instances, Respondent's employees represented that DCA covers check transactions, mortgage payments, car payments, utility bills, and other recurring-bill payments, rather than only Covered Transactions.

77. But enrollment in DCA is not required to cover check transactions, utility bills, or other recurring bill payments. Respondent's standard overdraft service covers those transactions.
78. On other calls, Respondent's phone employees stated that DCA takes effect on the date of enrollment, including to a consumer who wished to use the service immediately, and implied that enrolling in DCA would allow customers to exceed Respondent's daily ATM withdrawal limit of \$750 while incurring only one Covered Overdraft Fee.
79. But DCA takes effect the next business day following enrollment. And enrollment does not allow a consumer to exceed Respondent's daily \$750 ATM withdrawal limit. Consumers enrolled in DCA are still subject to Respondent's \$750 ATM withdrawal limit, and would incur multiple Covered Overdraft Fees if withdrawing more than that amount.
80. Section 1036(a)(1)(B) of the CFPB prohibits deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B).
81. As described in Paragraph 76, in connection with the marketing, promoting, offering for sale, or sale of DCA, in certain instances, Respondent has represented, expressly or impliedly, that DCA covers check transactions, mortgage payments, car payments, utility bills, and other recurring-bill payments.

82. In fact, Respondent's standard overdraft service covers those transactions. DCA enrollment is only required for Respondent to pay Covered Transactions.
83. As described in Paragraph 78, in connection with the marketing, promoting, offering for sale, or sale of DCA, in certain instances, Respondent has represented, expressly or impliedly, that: (1) DCA takes effect the date of enrollment, and (2) enrolling in DCA would allow customers to exceed Respondent's daily ATM withdrawal limit of \$750 while incurring only one Covered Overdraft Fee.
84. In fact, (1) DCA takes effect the next business day following enrollment, and (2) consumers would incur multiple Covered Overdraft Fees if withdrawing more than Respondent's \$750 ATM withdrawal limit.
85. Thus, Respondent's representations, as described in Paragraphs 81 and 83, constitute deceptive acts or practices in violation of §§ 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Deceptive Acts or Practices When Marketing DCA to Existing Customers by Mail

86. Until April 2016, Respondent used targeted mail marketing to solicit existing customers who had previously declined to enroll in DCA and who recently had a check returned for insufficient funds or a debit card that was declined.

87. In those marketing mailers, Respondent advertised DCA as “allow[ing]” Respondent “to cover all types of transactions, including ATM, one-time debit card transactions, checks, automatic bill payments, online banking transfers, and payments through bill pay, at our discretion.”
88. Consumers who enroll in DCA receive coverage on checks, automatic bill payments, online banking transfers, or payments through bill pay through Respondent’s standard overdraft service, not through their enrollment in DCA.
89. In the same marketing mailer, Respondent described its standard overdraft service as covering “[c]hecks and recurring items only” and as covering “checks and recurring payments, such as mortgage payments or monthly utility bills[.]”
90. Transactions such as “online banking transfers” and “payments through bill pay,” which Respondent presented as being “cover[ed]” by DCA but not Respondent’s standard overdraft service, are in fact covered by Respondent’s standard overdraft service.
91. Respondent’s description of its standard overdraft service in its marketing mailer did not list transactions such as “online banking transfers” and “payments through bill pay.”

92. Section 1036(a)(1)(B) of the CFPB prohibits deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B).
93. As described in Paragraph 87, in connection with the advertising, marketing, promoting, offering for sale, or sale of DCA, in numerous instances Respondent has represented, expressly or impliedly, that DCA covers checks, automatic bill payments, online banking transfers, and payments through bill pay.
94. In fact, enrollment in DCA is required to cover Covered Transactions only.
95. Thus, Respondent's representations, as described in Paragraph 93, constitute deceptive acts or practices in violation of §§ 1031(a) and 1036(a)(1)(B) of the CFPB, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's NSCRA Furnishing Practices in Violation of Regulation V and FCRA

96. Throughout the Relevant Period Respondent has furnished consumer-deposit-account information to two NSCRAs.
97. Respondent did not establish and implement policies or procedures concerning the accuracy and integrity of the information it furnished to those two NSCRAs until it implemented a furnishing policy relating to one of the NSCRAs in July 2016.

98. Respondent also failed to implement policies or procedures for handling NSCRA furnishing disputes until it implemented a policy relating to one of the NSCRAs in August 2016.
99. Respondent did not implement a policy or procedure for investigating disputes relating to furnishing information to the second NSCRA until April 2017.
100. Before at least June 2016, Respondent instructed consumers who called to dispute information Respondent had furnished to at least one NSCRA to contact the NSCRA, rather than to submit a Direct Dispute to Respondent.
101. Section 1022.42(a) of Regulation V, the implementing regulation of FCRA, 15 U.S.C. § 1681, et seq., requires a Furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information that it furnishes to a Consumer Reporting Agency, and further provides that the policies and procedures must be appropriate to the nature, size, complexity, and scope of each Furnisher's activities. 12 C.F.R. § 1022.42(a).
102. Through at least mid-2016, given the size, complexity, and scope of Respondent's furnishing activities, Respondent failed to establish or implement reasonable written policies and procedures regarding the

accuracy and integrity of the consumer information that it furnished to NSCRAs, in violation of Regulation V. 12 C.F.R. § 1022.42(a).

103. Section 1022.42(b) of Regulation V requires that Furnishers consider guidelines in Appendix E of the Furnisher Rule in developing appropriate policies and procedures, and incorporate them where appropriate. 12 C.F.R. § 1022.42(b).
104. Appendix E of the Furnisher Rule includes guidelines for furnishing policies and procedures that are reasonably designed to promote, among other things: accurate furnishing through appropriate internal controls, such as by verifying random samples of information provided to consumer-reporting agencies; conducting a periodic evaluation of a Furnisher's own practices, investigations of disputed information, and corrections of inaccurate information; and maintaining records for a reasonable period in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a Direct Dispute. Appendix E to 12 C.F.R. Part 1022.
105. Through at least mid-2016, Respondent also failed to incorporate certain elements in Appendix E, as appropriate, in its policies and procedures governing NSCRA furnishing, in violation of Regulation V. 12 C.F.R. § 1022.42(b).

106. During the Relevant Period, in certain cases, Respondent also failed to complete its investigations, reviews, and reports, including reporting the results of its investigation to an NSCRA, stemming from indirect disputes concerning consumer information Respondent had furnished to one NSCRA within 30 days or 45 days.
107. Respondent is unable to provide evidence of timely investigations of the vast majority of indirect disputes concerning NSCRA furnishing that it received prior to mid-2016.
108. After mid-2016, Respondent failed to investigate some indirect disputes concerning information Respondent had furnished to one NSCRA within 30 days.
109. Section 623(b)(2) of FCRA requires a Furnisher to complete all investigations, reviews, and reports, including reporting the results of its investigations to Consumer Reporting Agencies, stemming from an indirect dispute concerning the completeness or accuracy of information furnished to a Consumer Reporting Agency within 30 days. 15 U.S.C. § 1681s-2(b)(2).
110. The 30-day period may be extended for up to 15 additional days if the Consumer Reporting Agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation. 15 U.S.C. § 1681s-2(b)(2); *see also id.* § 1681i(a)(1)(B).

111. Because Respondent failed to complete its investigations of indirect disputes concerning information Respondent had furnished to an NSCRA within 30, or when applicable, 45 days, Respondent violated § 623(b)(2) of the FCRA, 15 U.S.C. § 1681s-2(b)(2).

CONDUCT PROVISIONS

V.

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

112. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate Regulation E, 12 C.F.R. § 1005.17(b)(1), and the CFPB, 12 U.S.C. §§ 5531(a) & (d)(1), 5536(a)(1)(B), as follows, and must take the following affirmative actions:

- a. In order to charge Covered Overdraft Fees at any time beginning 12 months from the Effective Date to any consumer who has remained enrolled in DCA since opening their consumer-checking account in person, at one of Respondent's stores or offsite account-opening events, between January 1, 2014 through December 31, 2018, but has not yet incurred a Covered Overdraft Fee, Respondent must first obtain a new enrollment decision from those consumers in a manner that is consistent with the following:

- i. without using a notice with a pre-marked “Enrolled in TD Debit Card Advance” option, and in a manner that is otherwise consistent with 12 C.F.R. § 1005.17(b)(1)(ii) and (iii); and
 - ii. when requesting a new enrollment decision from these Affected Consumers, Respondent must disclose, at a minimum, that: DCA covers Covered Transactions only; Respondent’s standard overdraft service covers, at Respondent’s discretion, remaining transactions such as checks, ACH, bill-pay, and recurring-debits; Respondent’s overdraft services charge consumers \$35 for each transaction that overdraws a consumer’s available balance (which includes pending transactions) by more than \$5, up to five times a day; and consumers have the option of enrolling in DCA, keeping Respondent’s standard overdraft service only, or declining all overdraft services.
- b. Within the timeframe set forth in the Compliance Plan (defined in Section VI below), Respondent must send a letter, by United States Postal Service first-class mail, address-correction service requested, to Affected Consumers who have maintained a checking

account with Respondent and who have remained enrolled in DCA since opening their consumer-checking account at one of Respondent's stores or offsite account-opening events between January 1, 2014 and December 31, 2018, that includes the following information: (1) the consumer's DCA enrollment status; (2) the transactions and fees associated with DCA coverage; and (3) detailed instructions on how to unenroll from DCA (Opt-In Status Letter). In the case of consumers who have elected to receive electronic communications from Respondent and for whom Respondent has current contact information, Respondent may send an electronic version of the Opt-In Status Letter. Respondent must submit the Opt-In Status Letter for review as part of the Compliance Plan.

- c. Within the timeframe set forth in the Compliance Plan, Respondent must ensure that its practices do not include pre-marking the "Enrolled" option on Respondent's written overdraft notice before requesting the customer's signature on that notice.
- d. Respondent must ensure that its practices do not include any of the following:

- i. requesting that new customers provide their DCA enrollment decision before receiving Respondent's written overdraft notice; and
 - ii. charging Covered Overdraft Fees, at any time beginning 12 months from the Effective Date, to consumers who have remained enrolled in DCA since opening their consumer-checking account between January 1, 2014 through December 31, 2018 but have not been charged a Covered Overdraft Fee, without first obtaining a new enrollment decision from the consumer (e.g., in person, online, or through a mailing or phone call) in a manner consistent with the requirements in Paragraph 112(a)(i)–(ii) above.
- e. 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 offering or advertising DCA, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:
- i. that DCA is free, a free benefit, or without cost;
 - ii. that DCA comes with Respondent's consumer-checking accounts, rather than an option that consumers must opt into;

- iii. which transactions DCA covers; or
- iv. any other fact material to consumers concerning DCA, such as total costs or any material restrictions, limitations, or conditions.

113. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate Regulation V, 12 C.F.R. § 1022.42, and FCRA, 15 U.S.C. § 1681s-2(b), and in connection with its NSCRA furnishing activities, must take the following affirmative actions:

- a. Respondent must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumer deposit accounts that it furnishes to NSCRAs appropriate to the nature, size, complexity, and scope of its furnishing activities; in doing so, Respondent must consider the guidelines in Appendix E to 12 C.F.R. Part 1022 and incorporate them where appropriate, and review and periodically update the policies and procedures as necessary to ensure their continued effectiveness; and
- b. Respondent must timely report to consumers the results of its investigations of Direct Disputes and indirect disputes filed by

consumers concerning the consumer-deposit-account information Respondent has furnished to NSCRAs.

VI.

Compliance Plan

IT IS FURTHER ORDERED that:

114. Within 60 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 offering and marketing of its overdraft protection services and Respondent's NSCRA furnishing practices comply 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; and
- b. specific timeframes and deadlines for implementation of the steps described above.

115. 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 make the revisions and resubmit the Compliance Plan to the Regional Director within 30 days.

116. 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:

117. 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.
118. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Regional Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with the laws that the Bureau enforces, including Federal consumer financial laws and this Consent Order.

119. 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; and
 - c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

MONETARY PROVISIONS

VIII.

Order to Pay Redress

IT IS FURTHER ORDERED that:

120. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account \$97 million, as restitution, for the purpose of providing redress to Affected Consumers as required by this Section.
121. Within 60 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 make the revisions 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.

122. The Redress Plan must:

- a. Provide a mechanism to pay \$97 million to Affected Consumers in total, reflecting all Redress Fees, and to ensure that each Affected Consumer receives the amount of Redress Fees that they paid;
- b. Specify how Respondent will identify Affected Consumers and determine the amount of Redress Fees incurred and paid by each Affected Consumer;
- c. Include the form letter or (in the case of a consumer who has elected to receive electronic communications from Respondent and for whom Respondent has current contact information) electronic communication to be sent notifying Affected Consumers of their redress (Redress Notification), which must include language explaining how the amount

- of redress was calculated and a statement that redress is being provided in accordance with the terms of the Consent Order; and
- d. Include the form of the envelope that will contain the Redress Notification.
123. Respondent must not include in any envelope containing a Redress Notification any materials other than the approved Redress Notification and redress checks, unless Respondent has obtained written confirmation from the Regional Director that the Bureau does not object to the inclusion of such additional materials.
124. The Redress Plan must describe the process for providing redress for all Affected Consumers under the terms of this Order, and must include the following:
- a. For Affected Consumers who maintain a checking account with Respondent and whose account has been affected by the practices described in this Order, Respondent must send a Redress Notification and either (1) mail a bank check or (2) issue an account credit;
- b. Respondent must mail a Redress Notification and mail a bank check to each Affected Consumer who no longer maintains a checking account with Respondent affected by the practices described in this Order, except that, if an Affected Consumer's checking account was closed with an

- outstanding negative balance, Respondent must reduce the amount of that negative balance by the amount of redress due, and must mail a bank check only to the extent that the redress due exceeds the Affected Consumer's outstanding negative balance;
- c. Respondent must send the bank check and any mailed Redress Notification by United States Postal Service first-class mail, address-correction service requested, to each Affected Consumer's last known address as maintained by Respondent's records. For Affected Consumers who no longer maintain a checking account with Respondent affected by the practices described in this Order, Respondent must first make reasonable attempts to obtain a current address through the National Change Address System before sending the bank check and Redress Notification to those Affected Consumers' last known address;
- d. For any Affected Consumer who maintains with Respondent a checking account affected by the practices described in this Order and whose Redress Notification and/or redress check is returned for any reason, Respondent must make reasonable attempts to obtain their current address using the National Change of Address System, and must promptly re-mail all returned Redress Notifications and redress checks to current addresses, if any; and

- e. Processes for handling any funds that remain unclaimed for a reasonable period.
125. After completing the Redress Plan, if the amount of restitution provided to Affected Consumers is less than \$97 million, 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 restitution provided to Affected Consumers and \$97 million.
126. The Bureau may use these remaining funds to pay additional restitution to Affected Consumers. If the Bureau determines, in its sole discretion, that additional restitution is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional restitution 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.
127. 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:

128. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$25 million to the Bureau.
129. Within ten 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.
130. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
131. 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.

132. 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:

133. 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.
134. 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.
135. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
136. 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:

137. 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.
138. Within seven days of the Effective Date, Respondent must 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.
139. Respondent must report any change in the information required to be submitted under Paragraph 138 above at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

140. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, sworn to under penalty of perjury, which, at a minimum:
- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
 - b. describes in detail the manner and form in which Respondent has complied with the Redress Plan and Compliance Plan; and
 - c. attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

XII.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

141. Within seven 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.
142. 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.

143. For five 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.
144. 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.

XIII.

Recordkeeping

IT IS FURTHER ORDERED that:

145. 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.
- c. copies of all training materials; advertisements; consumer-facing disclosures; and other marketing materials relating to the subject of this Consent Order, and all materials used to implement the Compliance Plan and measure or evaluate Respondent's fulfilment of the Compliance Plan, described in Section VI above.
- d. for each individual Affected Consumer, and each additional consumer who has remained enrolled in DCA since opening their consumer-checking account in person, at one of Respondent's stores or offsite account-opening events, between January 1, 2014 through December 31, 2018:
 - i. the consumer's name, address, phone number, email address;
 - ii. the amount of Covered Overdraft Fees paid;
 - iii. the date the consumer enrolled in DCA;
 - iv. the date the Affected Consumer first unenrolled from DCA (if applicable);
 - v. for consumers who did not unenroll from DCA before the

Effective Date and from whom Respondent has been required to obtain a new enrollment decision pursuant to Paragraph 112, the date and manner in which Respondent obtained the consumer's new enrollment decision; and

vi. the amount of redress paid by Respondent to the Affected Consumer.

e. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party) relating to Covered Overdraft Fees, and any responses to those complaints or requests.

146. Respondent must make the documents identified in Paragraph 145 available to the Bureau upon the Bureau's request.

XIV.

Notices

IT IS FURTHER ORDERED that:

147. 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 TD Bank, N.A., File No. 2020-BCFP-0007*," 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, Bureau Northeast Region
140 East 45th Street, 4th Floor
New York, NY 10017

XV.

Compliance Monitoring

IT IS FURTHER ORDERED that:

148. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondents' compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Respondents' compliance with those requirements.
149. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondents compliance with those requirements any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

150. 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.

XVI.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

151. 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.
152. 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

XVII.

IT IS FURTHER ORDERED that:

153. 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 154. 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.

154. Upon full payment of redress under the Redress Plan, as provided in Section VIII, and full payment of the civil money penalty, as provided in Section IX, 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.

155. 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.

156. This Consent Order will terminate five years from the Effective Date. 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.
157. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
158. 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.
159. 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.
160. 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.

161. 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 [19th] day of August, 2020.


Kathleen L. Kraninger
Director
Bureau of Consumer Financial Protection