

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

ADMINISTRATIVE PROCEEDING

File No. 2024-CFPB-0007

In the Matter of:

FAY SERVICING, LLC

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed Fay Servicing, LLC's mortgage servicing activities and compliance with the Bureau order resolving *In the Matter of Fay Servicing, LLC*, File No. 2017-CFPB-0014 (June 6, 2017) (2017 Order) and identified the following violations of law. Fay Servicing, LLC (Fay Servicing or Respondent) violated the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536; the 2017 Order; the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601-2617, and its implementing regulation, Regulation X, 12 C.F.R. part 1024; the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601-1667f, and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; and the Homeowners Protection Act (HPA), 12 U.S.C. §§ 4901-4910. Under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565,

the Bureau issues this Consent Order (Consent Order), which supersedes the 2017 Order.

I.

Overview

1. The Bureau has promulgated rules that, among other things, require mortgage servicers to provide protections to certain borrowers who apply for relief related to their mortgages, a process known as loss mitigation. These rules require mortgage servicers to implement internal policies and procedures and take certain steps with respect to borrowers' loss mitigation applications.
2. In 2017, the Bureau found that Respondent violated certain provisions of these rules. The parties agreed to resolve those findings without litigation through the 2017 Order, which required Respondent to pay restitution and to abide by certain conduct provisions.
3. Since then, Respondent improperly advanced the foreclosure process for certain borrowers in violation of the 2017 Order, Regulation X, and the CFPA.
4. In addition, Respondent failed to comply with other servicing obligations relating to its administration of private mortgage insurance and assessment

of late fees. These failures resulted in consumers paying fees and premiums they did not owe.

II.

Jurisdiction

5. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565; RESPA, 12 U.S.C. §§ 2601-2617, and its implementing regulation, Regulation X, 12 C.F.R. part 1024; the HPA, 12 U.S.C. §§ 4901-4910; and TILA, 15 U.S.C. §§ 1601-1667f, and its implementing regulation, Regulation Z, 12 C.F.R. part 1026.

III.

Stipulation

6. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated August 21, 2024 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

IV.

Definitions

7. The following definitions apply to this Consent Order:
- a. “**Affected Consumers**” means Affected Loss Mitigation Consumers and Affected PMI Consumers, collectively.
 - b. “**Affected Loss Mitigation Consumer**” includes any borrower who was subjected to Improper Foreclosure Activity during the Relevant Period.
 - c. “**Affected PMI Consumer**” includes any borrower for whom Respondent:
 - i. disbursed borrower-paid PMI premiums more than 30 days after borrower-paid PMI was required to be terminated pursuant to 12 U.S.C. § 4902(b) or (c);
 - ii. did not provide a full refund of borrower-paid PMI premiums after termination; or
 - iii. disbursed PMI premiums from an escrow account even though the borrower carried lender-paid PMI on their loan.
 - d. “**Board**” means the duly-elected and acting Board of Directors of Fay Financial, LLC, which also serves as the Board of Directors of Fay Servicing.

- e. “**Effective Date**” means the date on which the Consent Order is entered on the administrative docket.
- f. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or their delegate.
- g. “**First Filing**” means, as set forth in 12 C.F.R. § 1024.41, the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.
- h. “**Improper Foreclosure Activity**” means an instance in which Respondent took one of the following actions against a borrower entitled to foreclosure protections under 12 C.F.R. § 1024.41(f)(2) or (g), or in connection with a borrower whose Loss Mitigation Application was reviewed by Respondent only for retention options, as described in Paragraphs 20-25:
 - i. making a First Filing;
 - ii. Moving for Judgment; or
 - iii. conducting a foreclosure sale.
- i. “**Loss Mitigation Application**” means, as set forth in 12 C.F.R. § 1024.31, an oral or written request for a Loss Mitigation Option that is

accompanied by any information required by a servicer for evaluation for a Loss Mitigation Option.

- j. **“Loss Mitigation Option”** means, as set forth in 12 C.F.R. § 1024.31, an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.
- k. **“Mortgage Insurance”** means, as set forth in 12 U.S.C. § 4901(8), insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a Residential Mortgage Transaction.
- l. **“Moving for Judgment”** means, as set forth in 12 C.F.R. § 1024.41, a servicer’s moving for foreclosure judgment or order of sale, including making a dispositive motion for foreclosure judgment such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. In non-judicial foreclosure proceedings, the term includes the sending, recording, posting, or publishing of the notice of sale, except in cases where sending, recording, posting or publishing the notice of sale is the First Filing.
- m. **“Original Value”** means, as set forth in 12 U.S.C. § 4901(12), with respect to a Residential Mortgage Transaction, the lesser of the sales

price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject Residential Mortgage Transaction was consummated. In the case of a Residential Mortgage Transaction for refinancing the principal residence of the mortgagor, “Original Value” means only the appraised value relied upon by the mortgagee to approve the refinance transaction.

- n. **“Private Mortgage Insurance”** or **“PMI”** means, as set forth in 12 U.S.C. § 4901(13), Mortgage Insurance other than Mortgage Insurance made available under the National Housing Act, Title 38, or Title V of the Housing Act of 1949.
- o. **“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 this Consent Order.
- p. **“Relevant Period”** means the period from June 7, 2017 to the Effective Date.
- q. **“Residential Mortgage Transaction”** means, as set forth in 12 U.S.C. § 4901(15), a transaction consummated on or after the date that is 1 year after July 29, 1998, in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent

consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction, or refinancing of that dwelling.

- r. **“Respondent”** or **“Fay Servicing”** means Fay Servicing, LLC and its successors and assigns.
- s. **“Senior Executives”** includes: (i) the President, Chief Executive Officer, and Chief Compliance Officer of Fay Servicing, (ii) any executives they report to at Fay Servicing, and (iii) Edward Fay for as long as he is a member or officer of the Board or is employed by, a contractor for, or has authority over Fay Servicing.
- t. **“Supervision Director”** means the Assistant Director of the Office of Supervision Policy for the Consumer Financial Protection Bureau, or their delegate.
- u. **“Termination Date”** means, as set forth in 12 U.S.C. § 4901(18), with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the Original Value of the property securing the loan; and, with respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based

solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the Original Value of the property securing the loan.

V.

Bureau Findings and Conclusions

The Bureau finds the following:

8. Respondent is a residential mortgage servicer with its principal place of business in Tampa, Florida and branch offices in Chicago, Illinois; Oakbrook Terrace, Illinois; Farmers Branch, Texas; and Lusaka, Zambia. It is a wholly owned subsidiary of Fay Financial, LLC, a Delaware limited liability company.
9. Respondent is a “covered person” as defined by 12 U.S.C. § 5481(6) and a “servicer” as defined by 12 C.F.R. § 1024.2(b) because, among other things, it services loans and is responsible for servicing federally related mortgage loans.
10. Edward Fay is the founder, Chief Executive Officer, and Chairman of the Board.
11. The Bureau issued the 2017 Order on June 6, 2017.

12. The 2017 Order found, among other things, that Respondent violated certain provisions of 12 C.F.R. §§ 1024.38 and 1024.41 by conducting First Filings, Moving for Judgment, and conducting foreclosure sales when those actions were prohibited. In addition, the 2017 Order found that Respondent failed to send, or timely send, required loss mitigation notices and also sent required notices with inaccurate and incomplete information, including notices that failed to state the documents and information needed for borrowers to complete their Loss Mitigation Applications and that failed to correctly advise borrowers of their appeal rights.
13. Regulation X, 12 C.F.R. § 1024.41, generally prohibits a servicer from making a First Filing, Moving for Judgment, or conducting a foreclosure sale from the date the borrower submits a complete or facially complete Loss Mitigation Application until one of the circumstances specified in 12 C.F.R. § 1024.41(f)(2) or (g) is met.

Findings and Conclusions as to Respondent's Loss Mitigation Practices

Respondent Engaged in Improper Foreclosure Activities

14. From June 7, 2017 until early 2020, Respondent did not ensure borrowers were protected from a First Filing, Moving for Judgment, or a foreclosure sale beginning on the day the borrower submitted the documents making their Loss Mitigation Application complete or facially complete. Instead, in

some instances, it took Respondent up to five days to review the documents and decide whether the documents made the application complete, or facially complete, before placing a foreclosure hold. Respondent's policy was to place the foreclosure hold retroactively to the date on which it received the documents necessary to complete the Loss Mitigation Application. This resulted in foreclosure activities that violated 12 C.F.R. § 1024.41(f)(2) or (g) during that up-to five-day period between when Respondent received and processed the documents.

15. In some instances during the Relevant Period, Respondent engaged in foreclosure activities that violated 12 C.F.R. § 1024.41(f)(2) or (g), even after the five-day period.
16. As a result of the conduct described in Paragraphs 14-15, since June 7, 2017, Respondent violated Regulation X. 12 C.F.R. § 1024.41(f)(2), (g).

Respondent's Policies and Procedures Were Not Reasonably Designed to Ensure Compliance with Regulation X and the 2017 Order

17. Regulation X requires a servicer to maintain policies and procedures reasonably designed to ensure the servicer can "provide a borrower with accurate and timely information . . . in response to the borrower's requests for information with respect to the borrower's mortgage loan," "[f]acilitate the sharing of accurate and current information regarding the status of an

evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel . . . including service provider personnel responsible for handling foreclosure proceedings," and "[s]ubmit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law." 12 C.F.R. § 1024.38(a), (b)(1)(iii), (v), (b)(3)(iii).

18. From June 7, 2017 through early 2020, for the reasons described in Paragraph 14, Respondent's policies and procedures were not reasonably designed to ensure that foreclosure counsel submitted accurate and current information in foreclosure filings that occurred during the window between when a borrower submitted a document that made the borrower's Loss Mitigation Application complete and when Respondent placed a foreclosure hold on the borrower's account, in violation of 12 C.F.R. § 1024.38(a), (b)(1)(v) and (b)(3)(iii).
19. Also, since June 7, 2017, Respondent's policies and procedures have failed to ensure that the data in its servicing system, upon which Respondent relies when responding to borrowers' requests for information about their loans, is accurate, in violation of 12 C.F.R. § 1024.38(a) and (b)(1)(iii). For example,

in multiple instances, data in the servicing system did not match the underlying documents.

Respondent Engaged in Unfair Acts and Practices When it Failed to Inform Borrowers How Their Indicated Preference for Retention Options Could Limit Available Non-Retention Loss Mitigation Options

20. An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and if the substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).
21. During the Relevant Period, Respondent asked borrowers applying for loss mitigation to state whether they were interested in a retention option, which allows a borrower to keep the property, or a non-retention option, which allows the borrower to deed the property to the owner of the loan or sell the property to satisfy the balance due on the loan.
22. During the Relevant Period, if a borrower expressed interest in a non-retention Loss Mitigation Option and the first approved option in the loss mitigation waterfall was a retention option, the Respondent would offer that retention option and, if the borrower was eligible, also a non-retention option. However, if a borrower expressed interest in a retention option or did not express a specific interest in either a retention or non-retention option, and the borrower qualified for a retention option, Respondent would offer

the borrower only the retention option. Respondent did not inform these borrowers that, if they indicated an interest in retaining the property or did not express a specific interest in a retention or non-retention option, and qualified for a retention option, they would not also be offered a non-retention option even if they were eligible for one.

23. When a borrower was offered a retention option but declined the offer, or accepted the offer but failed to perform under the option, Respondent removed the foreclosure hold on the borrower's account. Respondent permitted the borrower to reapply for loss mitigation, but proceeded with foreclosure actions.
24. Certain borrowers were subjected to further foreclosure-related actions and incurred foreclosure costs and fees. These were substantial injuries that were not reasonably avoidable because Respondent did not disclose to borrowers that their stated preference could result in their not being reviewed for all loss mitigation options. This practice also had no countervailing benefit to consumers or competition.
25. Thus, during the Relevant Period, by not informing the borrower that their stated interest in retaining their home, or lack of a stated interest, could result in the offer of retention but not non-retention options, Respondent

engaged in unfair acts and practices in violation of sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a), (c), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Violations of the 2017 Order

26. The 2017 Order prohibits Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of the 2017 Order from, directly or indirectly, violating RESPA, Regulation X, and the CFPA. It also requires Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of the 2017 Order to take affirmative actions, including, but not limited to:
- a. developing and implementing policies and procedures that ensure compliance with 12 C.F.R. § 1024.41, including that borrowers are appropriately protected from Improper Foreclosure Activity;
 - b. maintaining required data fields in a manner that allows for production on a real-time or near-real-time basis;
 - c. monitoring foreclosure activity to ensure that before an action is taken it is not prohibited by 12 C.F.R. § 1024.41(f)(2) or (g); and
 - d. monitoring and testing foreclosure holds to ensure they are timely placed and effective from the date Respondent receives the documents making an application complete or facially complete.

27. The 2017 Order places ultimate responsibility for Respondent's compliance with Federal consumer financial law and the 2017 Order on the Board, including the Chief Executive Officer and Chairman of the Board.
28. Since June 7, 2017, Respondent violated the 2017 Order by:
 - a. violating sections 1024.38 and 1024.41 of Regulation X, in violation of Paragraph 57 of the 2017 Order;
 - b. failing to develop and implement policies and procedures that ensure that borrowers were appropriately protected from prohibited foreclosure events in accordance with 12 C.F.R. § 1024.41(f)(2) and (g), in violation of Paragraph 57(c) of the 2017 Order;
 - c. failing to adequately maintain and produce data in the manner required by Paragraph 57(d) and (e) of the 2017 Order;
 - d. conducting foreclosure activities prohibited by 12 C.F.R. § 1024.41(f)(2) and (g), in violation of Paragraph 57(h) and (i) of the 2017 Order; and
 - e. failing to develop and implement policies and procedures that ensure compliance with 12 C.F.R. § 1024.41, in violation of Paragraph 57(o) of the 2017 Order.
29. By violating the requirements of Paragraph 57 and 57(c)-(e), (h), (i), and (o) of the 2017 Order, Respondent offered and provided financial products and services to consumers that were not in conformity with Federal consumer

financial law. Respondent therefore violated the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Findings and Conclusions as to Respondent's Handling of PMI and Late Fees

30. Home purchasers obtaining a conventional mortgage from a private mortgage originator who do not make a down payment of at least 20% of the purchase price are typically required to pay for insurance to protect the mortgage holder against the risk of default, referred to as “private mortgage insurance” (PMI). Borrowers either pay the premiums for PMI, known as borrower-paid PMI, or pay higher costs to obtain a mortgage with lender-paid PMI, where the lender pays the premiums.
31. Servicers, like Respondent, are required to administer PMI in compliance with applicable laws, including terminating borrower-paid PMI when borrowers have met the requirements for termination. If servicers fail to timely terminate borrower-paid PMI, then borrowers pay mortgage insurance premiums beyond what is required by law.
32. Respondent failed to comply with its obligations related to PMI under the HPA and Regulation X, and also engaged in unfair acts and practices. These failures included failure to timely terminate borrower-paid PMI and to stop making disbursements of PMI premiums from borrowers' escrow accounts; failure to provide borrowers with sufficient refunds for PMI payments after

terminating; and failure to account for PMI termination in annual escrow account statements.

33. Mortgage servicers are also responsible for providing accurate periodic statements that are consistent with the terms of the loan, and to collect according to those terms. Otherwise, borrowers may pay fees and amounts that they do not owe.
34. Respondent disclosed late fees on monthly periodic statements that were inconsistent with the relevant promissory notes, which can cause borrowers to pay amounts higher than they owe. Respondent's practices regarding late fees violated Regulation Z and were unfair and deceptive.

Respondent Failed to Timely Terminate Borrower-Paid PMI

35. The HPA requires servicers to terminate borrower-paid PMI on the Termination Date if the loan is current or on the first day of the month immediately following the date on which the loan becomes current after the Termination Date. 12 U.S.C. § 4902(b). The HPA requires servicers to recalculate the Termination Date after a loan is modified using the terms of the modified loan, rather than the original terms, and to identify the Termination Date as the date the borrower's loan balance is scheduled to reach 78% of the Original Value for the property. 12 U.S.C. §§ 4901(18), 4902(d).

36. The HPA also prohibits servicers from requiring borrower-paid PMI after the first day of the month immediately following the halfway point of the loan's amortization period if the borrower is current. 12 U.S.C. § 4902(c).
37. The HPA also prohibits servicers from requiring borrower-paid PMI premiums more than 30 days after the date on which PMI must be terminated. 12 U.S.C. § 4902(e).
38. Since June 7, 2017, Respondent failed to timely terminate borrower-paid PMI and has disbursed premiums more than 30 days after PMI should have been terminated, in violation of the HPA, 12 U.S.C. § 4902(b), (c), and (e).
39. These failures were the result of Respondent's inadequate internal procedures, inaccurate data, and human error. In addition, in some cases, Respondent calculated the Termination Date for loans that were modified by using the date when the borrower's loan balance was scheduled to reach 78% of the property value at the time of modification or 78% of the interest-bearing principal balance after modification, instead of the Original Value.

Respondent Failed to Provide Full Refunds of Unearned Borrower-Paid PMI Premium Payments After Timely Termination

40. The HPA requires servicers to provide refunds of all unearned borrower-paid PMI premiums within 45 days of termination. 12 U.S.C. § 4902(f)(1).
41. Since June 7, 2017, Respondent failed to fully refund unearned premiums,

including by failing to refund premiums that were disbursed in the 30 days after terminating borrower-paid PMI and failing to appropriately calculate the amount of the unearned premium paid prior to the date the borrower-paid PMI was terminated that must be refunded. As a result, Respondent failed to provide borrowers a full refund of unearned PMI premiums, in violation of the HPA, 12 U.S.C. § 4902(f)(1).

Respondent Inaccurately Disclosed PMI Premiums in Annual Escrow Statements

42. Regulation X requires a servicer to conduct an annual escrow account analysis to determine the borrower's monthly escrow payment for the next 12 months using an estimate of the amount of escrow items or, if known, the actual charge for the item. 12 C.F.R. § 1024.17(c)(7), (i)(1)(iv).
43. Until August 2022, Respondent disclosed 12 months of borrower-paid PMI premiums in annual escrow account statements even for loans scheduled to reach the Termination Date during the 12 months covered by the escrow analysis, in violation of 12 C.F.R. § 1024.17(c)(7).
44. Because Respondent disclosed PMI premium payments beyond the Termination Date, borrowers may have made higher payments than they should have into their escrow accounts that year.

*Respondent Engaged in Unfair Acts and Practices by
Disbursing Payments for PMI Premiums Borrowers Did Not Owe and
Failing to Fully Refund Unearned PMI Premiums*

45. On certain occasions, Respondent improperly disbursed PMI premiums from the escrow accounts of borrowers with lender-paid PMI.
46. As described in Paragraphs 38-39, Respondent also failed to timely terminate borrower-paid PMI and disbursed PMI premiums from borrowers' escrow accounts more than 30 days after the date on which PMI should have been terminated.
47. And as described in Paragraph 41, Respondent failed to fully refund all unearned PMI premiums to borrowers after terminating borrower-paid PMI.
48. The practices described in Paragraphs 45-47 substantially injured borrowers by removing money from their escrow accounts that they did not owe and failing to immediately fully refund borrowers their money. These injuries were not reasonably avoidable and there was no countervailing benefit to consumers or competition.
49. Thus, during the Relevant Period, Respondent engaged in unfair acts and practices in violation of sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a), (c), 5536(a)(1)(B).

Respondent Inaccurately Calculated Late Fees

50. Regulation Z requires servicers to provide mortgage borrowers with periodic statements that reflect the terms of the legal obligation between the parties, and that include, among other things, the amount of any late payment fee. 12 C.F.R. §§ 1026.31(d)(1), 1026.41(d)(1).
51. Because it had incorrect information in its servicing system about the amount, or formula to calculate the amount, of late fees, Respondent disclosed, assessed, and collected incorrect late fee amounts, in violation of 12 C.F.R. §§ 1026.31(d)(1) and 1026.41(d)(1).

Respondent Engaged in Unfair Acts and Practices When it Assessed and Collected Late Fees That Were Higher Than Borrowers Owed

52. As described in Paragraph 51, Respondent disclosed and assessed late fee amounts to borrowers that were higher than the amount the borrowers should have paid under the terms of the loan's promissory note.
53. Borrowers were substantially injured when they paid late fee amounts higher than the amount they should have paid. The injury was not reasonably avoidable and there was no countervailing benefit to consumers or competition.

54. Thus, during the Relevant Period, Respondent engaged in unfair acts and practices in violation of sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a), (c), 5536(a)(1)(B).

Respondent Engaged in Deceptive Acts and Practices When it Disclosed Late Fees That Were Higher Than Borrowers Owed

55. As described in Paragraph 51, Respondent sent periodic statements that disclosed and assessed late fee amounts that were higher than the amount required by the loan's promissory note, misleading borrowers, who rely on their servicer to disclose the correct late fee amount. Borrowers reasonably relied on Respondent for this information, and it was material to how much borrowers paid in late fees.

56. Thus, during the Relevant Period, Respondent engaged in deceptive acts and practices in violation of sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Violations of the CFPA

57. A covered person's violations of Federal consumer financial laws are violations of section 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

58. The CFPA defines "Federal consumer financial law" to include RESPA, Regulation X, TILA, Regulation Z, and HPA. 12 U.S.C. § 5481(12), (14).

59. As a result, Respondents' violations of these Federal consumer financial laws constitute violations of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

VI.

Conduct Provisions

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

60. Respondent, and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Consent Order, whether acting directly or indirectly, may not violate RESPA, 12 U.S.C. §§ 2601-2617 and its implementing regulation, Regulation X, 12 C.F.R. part 1024; the HPA, 12 U.S.C. §§ 4901-4910; TILA, 15 U.S.C. §§ 1601-1667f and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; and the CFPA 12 U.S.C. §§ 5531 and 5536, and is prohibited from:

- a. engaging in Improper Foreclosure Activity;
- b. failing to timely terminate borrower-paid PMI, disbursing PMI premiums more than 30 days after borrower-paid PMI should have been terminated, failing to fully refund all unearned borrower-paid PMI premiums, requiring payment of PMI premiums by borrowers with lender-paid PMI, and failing to incorporate borrower-paid PMI termination in annual escrow statements; and

- c. disclosing, assessing, or collecting incorrect late fees.
61. Respondent and its officers, agents, servants, employees, and attorneys, who have actual notice of this Consent Order, whether acting directly or indirectly, must take the following affirmative actions:
- a. for Affected Loss Mitigation Consumers identified by the Bureau to Respondent, where Respondent has not already done so, delete, update, and correct any information related to Improper Foreclosure Activity that Respondent reported to any consumer reporting agency, including requesting that any information related to a First Filing, Moving for Judgment, or a foreclosure sale be removed, and refrain from verifying the debt;
 - b. for Affected Loss Mitigation Consumers identified by the Bureau to Respondent, where a foreclosure sale has not been completed or was completed but rescinded, where Respondent is still servicing the loan, and where the Affected Loss Mitigation Consumer has not had a subsequent Loss Mitigation Application evaluated where the Affected Loss Mitigation Consumer was offered a non-retention offer or was evaluated for, but not eligible for, a non-retention offer:
 - i. place a foreclosure hold on the borrower's account;
 - ii. stop the foreclosure proceeding or process; and

- iii. solicit the borrower to submit a Loss Mitigation Application to be considered for available Loss Mitigation Options consistent with investor guidelines and 12 C.F.R. § 1024.41. Respondent must not take any foreclosure action prohibited by 12 C.F.R. § 1024.41 against the borrower within 60 days after sending Respondent's solicitation and may not treat the borrower's Loss Mitigation Application as a duplicative request under 12 C.F.R. § 1024.41(i);
- c. record, maintain, and track activities and events that evidence compliance with 12 C.F.R. §§ 1024.38 and 1024.41 for each separate Loss Mitigation Application a borrower submits as data fields or information that can be derived from data fields in Respondent's information system, in a manner that allows Respondent to produce such data promptly, and maintain a historical record of all information entered in those data fields;
- d. create and maintain a written record that documents how Respondent records, maintains, and tracks the activities and events that evidence compliance with 12 C.F.R. §§ 1024.38 and 1024.41 as information in data fields in Respondent's information system;
- e. develop and implement controls to ensure Respondent's personnel are correctly entering data into Respondent's information system;

- f. monitor foreclosure activity to ensure that before an action is taken, it is not prohibited by 12 C.F.R. § 1024.41, including checking the status of any loss mitigation for which the borrower has applied or is being reviewed;
- g. monitor and test foreclosure holds to ensure they are timely placed in compliance with 12 C.F.R. § 1024.41;
- h. monitor and test to ensure foreclosure counsel takes reasonable steps in response to the placement of a hold, including taking reasonable steps to avoid a ruling on motions that may directly result in a judgment of foreclosure or order of sale;
- i. promptly instruct, or provide guidance to, foreclosure counsel to stop foreclosure activity prohibited by 12 C.F.R. § 1024.41 or take reasonable steps to avoid a ruling on any pending motions for judgment or order of sale when a borrower becomes entitled to a foreclosure hold pursuant to 12 C.F.R. § 1024.41;
- j. develop and implement written policies and procedures that ensure compliance with 12 C.F.R. §§ 1024.38 and 1024.41, train and retrain all of Respondent's personnel and service providers on the written policies and procedures with appropriate frequency and when those policies and procedures change, and implement controls to test Respondent's

- personnel's compliance with those policies and procedures with appropriate frequency;
- k. perform monthly testing to ensure that Respondent is meeting its obligations under this Consent Order, including testing the automated or technological components of its processes and data integrity, and new measures implemented as part of the Compliance Plan;
 - l. provide reporting on the monthly testing to the Board and Senior Executives on a quarterly basis;
 - m. create and maintain a record that documents all changes to policies, procedures, and job aids;
 - n. develop and implement controls to ensure that, before lifting a loss mitigation related foreclosure hold, Respondent is entitled to remove the hold and the data in Respondent's information system accurately reflects that;
 - o. develop and implement controls to ensure that the loss mitigation processing information in borrower servicing files matches the data entered into the corresponding data fields in Respondent's data system;
 - p. develop and implement policies and procedures to ensure borrower complaints are reviewed for systemic problems;

- q. improve the onboarding, storage, accessibility, and integration into servicing activities of primary source documents through the deployment of a central document repository for all underlying loan documents relevant to Respondent's loan servicing and also deploy technology to enable the extraction of data points required for the auditing of PMI termination calculations and late fee assessment from primary source documents for newly boarded loans;
- r. conduct a data audit relevant to late charges and PMI to identify discrepancies between existing data and data obtained from digitized loan documents;
- s. conduct a root cause analysis for any ongoing PMI termination, PMI refund, and late fee errors and develop and implement a plan to address the causes identified and provide refunds of PMI premiums to any consumers who had not previously been refunded;
- t. develop and implement a plan to automate to the extent possible, with manual quality control processes as appropriate, the auto-termination of PMI and any other manual processes related to PMI termination, PMI refund, and late fee errors that are identified as a weakness during the root cause analysis;

- u. develop and implement enhanced training for employees responsible for PMI and reviewing promissory notes to identify late fee payment terms;
- v. implement additional internal quality control and quality assurance processes for PMI and late fee payment terms to ensure that Respondent is appropriately and timely terminating and refunding PMI and imposing accurate late fees in conformity with loan documents; and
- w. implement a 60-day late fee stop whenever a late fee payment code is changed within Respondent's system.

VII.

Compliance Committee and Compliance Plan

IT IS FURTHER ORDERED that:

- 62. The Board must establish a Compliance Committee made up of at least two Senior Executives and two Board members. Within 15 business days of the Effective Date, the Board must provide in writing to the Supervision Director the name and title of each member of the Compliance Committee.
- 63. For a period of 5 years after the Effective Date, the Compliance Committee will be responsible for monitoring and coordinating Respondent's adherence to the provisions of this Consent Order. The Compliance Committee must meet at least every other month and maintain minutes of its meetings.

64. Within 30 days of the Effective Date, the Compliance Committee must create and implement a comprehensive compliance plan designed to ensure that Respondent's loss mitigation and administration of PMI and late fees complies with RESPA, 12 U.S.C. §§ 2601-2617 and its implementing regulation, Regulation X, 12 C.F.R. part 1024; the HPA, 12 U.S.C. §§ 4901-4910; TILA, 15 U.S.C. §§ 1601-1667f and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; the CFPA 12 U.S.C. §§ 5531 and 5536; and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include at a minimum:
- a. detailed steps for addressing each action required by this Consent Order;
 - b. quarterly reporting to the Board and Senior Executives about the status of compliance actions; and
 - c. specific timeframes and deadlines for implementation of the steps described above.

Respondent will provide a copy of the Compliance Plan to the Bureau upon request.

65. Within 30 days of the Effective Date, Respondent must create an internal audit group or function that conducts the monitoring and reporting required by this Consent Order. The internal audit group must be independent of management and will report directly to the Compliance Committee. The

internal audit group will create a written quarterly report, which it will submit directly to the Compliance Committee. Within 7 days of receipt, the Compliance Committee must provide a copy of the internal audit group's quarterly report to the Board and Senior Executives.

66. The Compliance Committee must select and engage an independent third-party auditor to conduct a comprehensive annual review and audit of Respondent's compliance with this Consent Order. One year after the Effective Date, and annually for 4 years thereafter, the third-party auditor must provide the Compliance Committee with an annual written report of its findings. Within 7 days of receipt, the Compliance Committee must provide a copy of the third-party auditor's annual report to the Board and Senior Executives.
67. For a period of 5 years from the Effective Date, the Board and Senior Executives must receive and review all reports produced by the internal audit group and the third-party auditor on at least a quarterly basis. The Board and Senior Executives must also receive and review quality assurance and quality control reports related to loss mitigation, foreclosure, PMI, late fees, and borrower complaints produced by any department within Respondent, or summaries of such reports and complaints, on at least a quarterly basis. Respondent must retain the written record identifying the

specific reports, audits, and summaries reviewed and copies of each report, audit, and summary reviewed for a period of 5 years from the Effective Date and must provide the written record and copies to the Bureau upon request.

VIII.

Role of the Board and Senior Executives

IT IS FURTHER ORDERED that:

68. The Board and Senior Executives have the ultimate responsibility for ensuring that Respondent complies with this Consent Order.
69. The Board and Senior Executives must review all plans and reports required by this Consent Order, and any submissions to the Bureau prior to such submission.
70. One year after the Effective Date, and annually thereafter for the next 4 years, Respondent must create an accurate written compliance progress report (Compliance Report) that has been approved by the Board, the accuracy of which is sworn to under penalty of perjury, and which, at a minimum:
 - a. describes the steps that Respondent's Board and Senior Executives have taken to reasonably assess whether Respondent is complying with the Compliance Plan and each applicable paragraph and subparagraph of this Consent Order;

- b. describes in detail whether and how Respondent has complied with the Compliance Plan and each applicable paragraph and subparagraph of this Consent Order, including the manner of verification of such compliance and any corrective actions taken to remedy potential non-compliance with the applicable requirement, paragraph, or subparagraph; and
- c. attaches a copy of each Order Acknowledgment obtained under Section XIV, unless previously submitted to the Bureau.

Respondent will provide a copy of the annual Compliance Report(s) upon request by the Bureau.

71. The Board and Senior Executives must:
- a. authorize whatever actions are necessary to assess whether Respondent is complying with the Compliance Plan and each applicable paragraph and subparagraph of this Consent Order;
 - b. authorize whatever actions, including corrective actions, are necessary for Respondent to fully comply with the Compliance Plan and each applicable paragraph and subparagraph of this Consent Order; and
 - c. require timely reporting by management to the Board and Senior Executives on the status of compliance obligations.

IX.

Corporate Responsibility Provisions

IT IS FURTHER ORDERED that:

72. Respondent will invest at least \$2 million to update its servicing technology and compliance management systems. Within 10 days of the Effective Date, Respondent must reserve or deposit such funds into a segregated deposit account.
73. Respondent may not provide any compensation or non-tax distributions to Edward Fay, directly or indirectly, if the Compliance Committee, internal audit group, or third-party auditor finds that Edward Fay did not take actions necessary to ensure compliance with this Consent Order, until such actions necessary to ensure compliance with this Consent Order are taken. Edward Fay must be recused from any Board or Compliance Committee discussions concerning this provision.

MONETARY PROVISIONS

X.

Order to Pay Redress

IT IS FURTHER ORDERED that:

74. A judgment for monetary relief, redress, and damages is entered in favor of the Bureau and against Respondent in the amount of \$3,000,000.

75. Within 10 days of the Effective Date, 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, \$3,000,000 in full satisfaction of the judgment as ordered in Paragraph 74 of this Section.
76. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including but not limited to refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.
77. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
78. Payment of redress to any Affected Consumer under this Consent Order may not be conditioned on that Affected Consumer waiving any right.

XI.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

79. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section V of this Consent Order, Respondent must pay a civil money penalty of \$2,000,000 to the Bureau.
80. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
81. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
82. 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.

83. 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.

XII.

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

84. 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 entry of judgment to the date of payment, and will immediately become due and payable.
85. 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.
86. Respondent acknowledges that its Taxpayer Identification Number, which Respondent previously submitted to the Bureau, may be used for collecting and reporting on any delinquent amount arising out of this Consent Order, in accordance with 31 U.S.C. § 7701.
87. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Bureau 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

XIII.

Reporting Requirements

IT IS FURTHER ORDERED that:

88. 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 longer than 14 days after the development.
89. Within 7 days of the Effective Date, Respondent must:
 - a. designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Respondent; and

- b. designate at least one telephone number and email, physical, and postal addresses as points of contact for consumers with inquiries related to consumer relief under the Consent Order.
90. Respondent must report any change in the information required to be submitted under Paragraph 89 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

XIV.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

91. Within 7 days of the Effective Date, Respondent must submit to the Supervision Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
92. 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.
93. For 5 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 XIII, 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 this Consent Order before they assume their responsibilities.

94. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
95. Ninety days from the Effective Date, Respondent must submit to the Supervision Director a list of all persons and their titles to whom this Consent Order has been delivered under this Section and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 94.

XV.

Recordkeeping

IT IS FURTHER ORDERED that:

96. Respondent must create, for at least 5 years from the Effective Date, all documents and records necessary to demonstrate full compliance with the Compliance Plan and each provision of this Consent Order, including all submissions to the Bureau.

97. Respondent must retain the documents created pursuant to Paragraph 96 for at least 5 years after creation and make them available to the Bureau upon the Bureau's request.
98. Respondent must maintain, for at least 5 years from the Effective Date or 5 years after creation, whichever is longer, copies of all template communications with borrowers engaged in the loss mitigation process; all policies, procedures, training materials, complaints, responses to complaints, refund requests, and responses to refund requests related to loss mitigation, foreclosure, PMI, and late fees; and all data related to the servicing of loans.
99. All documents and records must be maintained in their original electronic format. Data should be centralized, and maintained in such a way that access, retrieval, auditing, and production are not hindered.
100. Respondent must make the documents identified in Paragraph 98 available to the Bureau upon the Bureau's request.

XVI.

Notices

IT IS FURTHER ORDERED that:

101. 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 Fay*

Servicing LLC, File No. 2024-CFPB-0007” and send them to the following email: Enforcement_Compliance@cfpb.gov addressed as follows:

ATTN: Supervision Director
Consumer Financial Protection Bureau
Office of Supervision Policy

ATTN: Enforcement Director
Consumer Financial Protection Bureau
Office of Enforcement

XVII.

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

102. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents’ possession or control within 30 days of receiving a written request from the Bureau.
103. Respondent must remain registered for the Bureau’s Company Portal and in connection with responding to consumer complaints and inquiries on the Company Portal, must comply with the timely response requirements set forth in section 1034(b) and (c) of the CFPA, 12 U.S.C. § 5534(b).

104. Unless otherwise prohibited by law or regulation, Respondent must identify on its website that consumers can file a complaint with the Bureau and provide the applicable telephone, website, and mailing information to do so.

XVIII.

Compliance Monitoring

IT IS FURTHER ORDERED that:

105. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
106. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in Section V; or (c) compliance with this Consent Order. The person interviewed may have counsel present.
107. 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.

XIX.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

108. 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 Supervision Director or Enforcement Director, as applicable.
109. The Supervision Director or Enforcement Director, as applicable, may, in their discretion, modify any non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) if they determine good cause justifies the modification. Any such modification by the Supervision Director or Enforcement Director must be in writing.

XX.

ADMINISTRATIVE PROVISIONS

IT IS FURTHER ORDERED that:

110. 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 111. 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.

111. 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 V of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against 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.
112. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
113. This Consent Order supersedes the 2017 Order.
114. This Consent Order will terminate on the later of 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action

alleging any violation of the Consent Order by Respondent if such action is initiated within 5 years of the Effective Date. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

115. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
116. 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.
117. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the 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.

118. 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.
119. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Executives, officers, or employees, or the Board to violate any law, rule, or regulation.

IT IS SO ORDERED, this 21st day of August, 2024.

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau