

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 FIRST LOWNDES BANK, INC.,)
)
 Defendant.)

CIVIL ACTION NO.

2:08 cv 798-WKW

CONSENT ORDER

I. INTRODUCTION

This Consent Order is submitted jointly by the parties for the approval of and entry by the Court simultaneously with the filing of the United States' complaint. The Consent Order fully resolves the claims of the United States that Defendant First Lowndes Bank ("First Lowndes" or "Bank") has violated the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f ("ECOA"), and the Fair Housing Act, 42 U.S.C. §§ 3601-3619 ("FHA"). In its Complaint, the United States alleges that First Lowndes engaged in a pattern or practice of discrimination on the basis of race in setting interest rates for conventional, first-lien loans for owner-occupied manufactured homes ("covered loans"), in violation of both the FHA and ECOA.

Under the terms of this Order, First Lowndes will put into place policies and procedures to ensure that the pricing of its residential loan products is done in a nondiscriminatory manner consistent with the requirements of the FHA and ECOA and will

FILED
BY 9.30.08

compensate certain African-American borrowers.

The Bank denies the United States' allegations that it engaged in discrimination on the basis of race in the pricing of these loans. There has been no factual finding or adjudication with respect to any matter alleged by the United States. Rather, both parties have entered into this Order, as evidenced by the signatures below, to resolve voluntarily the claims asserted by the United States in order to avoid protracted and costly litigation.

II. SUMMARY OF THE UNITED STATES' ALLEGATIONS

In 2006, the Federal Deposit Insurance Corporation ("FDIC") conducted a compliance examination of First Lowndes Bank. The examination included a review of the Bank's pricing of conventional, first-lien loans for owner-occupied manufactured homes. The FDIC examiners initially found a substantial interest rate differential for this category of loans between African-American and white borrowers. After receiving from the Bank a list of the factors that it represented its loan officers used to price these loans, the FDIC conducted further analyses of the loan file data. The FDIC concluded that there was reasonable cause to believe that First Lowndes engaged in a pattern or practice of discrimination against African-American borrowers on the basis of race in pricing these loans, in violation of the FHA and ECOA and their implementing regulations. Following its

determination, and pursuant to ECOA, 15 U.S.C. §1691e(g), the FDIC referred the matter to the Attorney General on September 22, 2006, for appropriate enforcement action.

Based on information obtained during the FDIC's 2006 examination and information that the Bank subsequently provided the United States, the Complaint alleges that First Lowndes engaged in a pattern or practice of discrimination against African-American borrowers on the basis of race in pricing conventional, first-lien loans for owner-occupied manufactured homes, in violation of the FHA and ECOA. As alleged in the Complaint, the differences in the interest rates First Lowndes charged to African-American borrowers and those charged to white borrowers cannot be explained fully by factors unrelated to race, such as differences in individual creditworthiness or differences in loan amount. The interest rate differences between similarly situated African-American and white borrowers, approximately 150 basis points (1.5%), are statistically significant.

III. REMEDIAL ORDER

1. Unless otherwise stated herein, the remedial provisions of this Consent Order shall be implemented within thirty (30) days of the effective date of this Consent Order and shall continue throughout its term. The effective date of this Order shall be the date on which it is approved and entered by the Court.

A. General Nondiscrimination Injunction

2. Upon entry of this Order, First Lowndes Bank, including all of its officers, employees, agents, representatives, assignees, and successors in interest, is hereby enjoined from engaging in any act or practice that discriminates on the basis of race or color (a) in making available, or in the terms or conditions of, a residential real estate-related transaction, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604, 3605; and (b) in any aspect of a credit transaction, in violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f.

B. Pricing Policy and Procedures

3. First Lowndes has developed and implemented a rate sheet for pricing consumer-purchase (non-commercial) residential real estate-related loans that does not allow for any variance from the published rates without approval in writing from a senior loan officer or the Bank's Chief Executive Officer. The Bank's pricing policy shall be modified as follows. If the Bank chooses to allow any of its employees or officials discretion to deviate from the interest rate set by the rate sheet, it shall specify and implement in its loan pricing policy: (a) limits on the amount by which the interest rate may deviate, either upward and downward, from the rate sheet; (b) the factors that a Bank employee or officer may consider in the exercise of that discretion; (c) a requirement that each applicant be provided

with a written notice that each APR is negotiable, in a form approved in advance by the United States; and (d) a requirement to include in each loan file where the final interest rate varies from the published rate written documentation of the factors relied on in connection with the individual loan application and how those factors affected the pricing decision. In addition, the policy shall require the Bank to post and prominently display in each branch or office a notice of non-discrimination.

4. The Bank shall provide a copy of its revised loan policy to counsel for the United States within thirty (30) days of the effective date of this Order.¹ The United States shall have twenty-one (21) days from receipt of the loan policy to raise any objections to it, and if it raises any, the parties shall confer to resolve their differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution.

5. The Bank shall develop and implement a loan review system for consumer-purchase (non-commercial) residential real estate-related loans designed to ensure compliance with the nondiscrimination requirements of the FHA, ECOA, and this Order.

¹ All material required by this Order to be sent to counsel for the United States shall be sent by commercial overnight delivery service addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 1800 G Street NW, Washington, DC 20006, Attn: DJ 188-2-4, or by facsimile to 202/514-1116.

That system shall require a quarterly review by a designated senior manager of the Bank of all such loans originated during the preceding quarter. Each such quarterly review shall be memorialized in writing, signed and dated by the designated senior manager, and shall be provided to the Bank's officers and Board not later than thirty (30) days after the end of each quarter. Each review shall include, but not be limited to, a comparison and analysis of the terms and conditions, including the pricing, of such loans by the race of the borrowers. In the event that any such review discloses disparities in the pricing of such loans between African-American and white borrowers, the Bank shall promptly determine the reason(s) for those pricing disparities and shall promptly take appropriate corrective action, if necessary. The Bank shall provide these quarterly reviews and all documentation relating thereto, including documentation of its reasons for taking or not taking corrective action, to the United States on a quarterly basis.

6. During the term of this Order, the Bank may change its loan policy for consumer-purchase (non-commercial) residential real estate-related loans upon written notice to the United States, which shall have twenty-one (21) days from receipt of such notice to raise any objection to the proposed change. If it raises any objection, the parties shall confer to resolve their differences. In the event they are unable to do so, either party

may bring the dispute to this Court for resolution.

C. Equal Credit Opportunity Training Program

7. Within thirty (30) days after the Bank's new loan policy is approved by the United States or the Court, First Lowndes shall provide equal credit opportunity training to its management officials, loan officers, and any other employees who participate in the pricing of consumer-purchase (non-commercial) residential real estate-related loans ("covered employees"). During this training, the Bank shall provide to each participant: (a) a copy of this Order and the Bank's new loan pricing policy; and (b) training on the terms of this Order, the new loan pricing policy, the requirements of the Fair Housing and Equal Credit Opportunity Acts, and his or her responsibilities under each. During the term of this Order, First Lowndes Bank shall provide annual equal credit opportunity training to covered employees with respect to his or her responsibilities and obligations under the FHA, the ECOA, and this Order.

8. The Bank shall secure from each covered employee a signed statement acknowledging that he or she has received a copy of this Order and the loan pricing policy and has completed equal credit opportunity training. These statements shall be substantially in the form of Appendix A (Acknowledgment) and Appendix B (Equal Credit Opportunity Training). During the term of the Order, each new covered employee shall be provided a copy

of this Order and sign the acknowledgment form statement (Appendix A) within ten (10) days of beginning his or her employment in that position.

9. The equal credit opportunity training shall be conducted by a qualified person or organization not connected to the Bank that is approved in advance by the United States. The Bank shall inform the United States in writing at least thirty (30) days in advance of the proposed training of the identity of the person or organization who will conduct the training. If the United States objects to the person or organization who the Bank has selected, the United States shall so notify the Bank in writing within fifteen (15) days of receipt of notification. In the event that the United States timely objects, the parties shall confer to resolve the dispute and, in the event they are unable to do so, either party may bring the dispute to this Court for resolution. Any expenses associated with this training program shall be borne by First Lowndes Bank.

IV. MONETARY COMPENSATION

10. First Lowndes Bank shall deposit in an interest-bearing escrow account the total sum of one hundred eighty-five thousand dollars (\$185,000.00) for the purpose of paying damages to aggrieved persons, as defined in paragraph 12, who may have suffered as a result of the Bank's alleged failure to comply with the Fair Housing and Equal Credit Opportunity Acts (the

"Settlement Fund"). The Bank shall provide written verification of this deposit to the United States. Any interest that accrues shall become part of the Settlement Fund and be utilized as set forth herein.

11. Payments from the Settlement Fund to aggrieved persons shall be made based on a process that has been agreed to by the United States and First Lowndes Bank, subject to the following conditions:

- (a) No aggrieved person shall be paid any amount from the Settlement Fund until after the execution of a written release of all claims, legal or equitable, which he or she might have against the Bank regarding the claims asserted by the United States in this lawsuit, so long as such claims accrued prior to the entry of this Consent Order. The form of the release is set forth in Appendix C; and
- (b) The total amount to be paid by the Bank to the aggrieved persons shall not exceed one hundred eighty-five thousand dollars (\$185,000.00), plus the interest that has accrued on the Settlement Fund.

12. The United States has identified the aggrieved persons for the time period from January 1, 2004 through September 30, 2005 who are eligible for compensation under this Order. For purposes of identifying aggrieved persons prior to and after that

period, First Lowndes Bank will provide to the United States paper files and electronic records (to the extent available) of conventional first lien loans to African-American borrowers and borrowers who are not identified by race for owner-occupied manufactured homes from January 1, 2001 through December 31, 2003 and from October 1, 2005 through August 9, 2007. First Lowndes Bank shall provide the United States any other records or documents in its possession that the United States reasonably requests to help identify or locate aggrieved persons. For purposes of this Consent Order, "aggrieved persons" are defined as: African-American borrowers of conventional first-lien loans for owner-occupied manufactured homes from January 1, 2001 through August 9, 2007, who may have been charged an interest rate higher than comparable white borrowers.

13. Within two hundred forty (240) days of the Effective Date of this Consent Order, the United States shall provide to First Lowndes Bank a list of aggrieved persons. First Lowndes Bank shall have thirty (30) days in which to review the list, and the United States shall consider in good faith any issues raised by the Bank.

14. Thereafter, the United States shall notify the aggrieved persons and shall provide counsel for First Lowndes with all executed releases that it receives. Within ten (10) days of the receipt of the Releases, the Bank shall issue checks,

drawn on the Settlement Fund, and mail the checks to the aggrieved persons who executed and returned the releases within 90 days of receipt of the notification by the aggrieved person. The Bank shall provide a copy of each check to the United States. In the event that less than the total amount in the Settlement Fund, including accrued interest, is distributed to aggrieved persons, the remainder shall be returned to the Bank.

V. ADMINISTRATION

A. Record-Keeping and Reporting Requirements

15. For the term of this Order, in addition to the standard document retention requirements imposed on the Bank by federal statute and regulation, First Lowndes shall retain: (1) all documents, including complete loan files, for all applications for covered loans and for all covered loans originated; and (2) all documents relating to the pricing of covered loans, including rate sheets and internal documents regarding the exercise of loan officers' discretion in pricing such loans and the actions of the designated reviewer. These documents shall be maintained as they are originally compiled by the Bank, either in hard copy, electronically, or both. The Bank also shall retain all records relating to its compliance with this Order, including the quarterly loan reviews and any follow-up documentation and documents concerning its equal credit opportunity employee training.

16. Upon reasonable written notice to the Bank, the United States shall be provided access to any and all records related to compliance with this Order, including but not limited to individual loan files, databases containing loan file data, pricing policies and guidelines, pricing reviews, rate sheets, and quarterly loan reviews along with any follow-up documentation.

17. First Lowndes shall advise the United States in writing within fifteen (15) days of the receipt of any new oral or written discrimination complaint against the Bank or its employees with respect to consumer-purchase (non-commercial) residential real estate-related loans. The Bank also shall promptly provide the United States all non-privileged information it may request concerning any such complaint. Within ten (10) days of the resolution of any such complaint, the Bank shall advise the United States of the terms of such resolution.

18. First Lowndes shall serve annual compliance reports on the United States for the term of this Order within thirty days of each anniversary of its effective date. Each compliance report shall contain the following documents or information:

- a. a complete account of the Bank's efforts to comply with the requirements of this Order in the previous year;
and
- b. the signed statements of receipt of this Order and

attendance at equal credit opportunity training for all covered employees.

B. Retention of Jurisdiction, Modifications, and Remedies for Non-Performance

19. The requirements of this Order shall be binding on First Lowndes Bank, including all of its officers, directors, employees, and also on the Bank's successors in interest. In the event First Lowndes is acquired by another lender and the successor institution intends to continue to make consumer-purchase (non-commercial) residential real estate-related loans, the Bank shall obtain the written agreement of the successor to any obligations remaining under this Consent Order, noting specifically that paragraph 6 provides for the United States to review and approve any changes in the loan pricing policy mandated by paragraphs 3-5 of this Order. If the successor institution proposes to substitute its own loan policy and training procedures for those set forth in Sections III(B) and III(C) ("successor procedures") of this Consent Order, the successor institution shall provide the proposed policy and procedures, as well as explanatory documentation, to the United States at least 60 days before it plans to implement the new policy and procedures. The successor procedures may be implemented unless the United States objects within 60 days of receiving the proposed changes and documentation. If the United States does object, the parties will follow the dispute

resolution procedures of paragraph 21.

20. The term of this Order shall be three (3) years and ninety (90) days, beginning on the effective date. The Court shall retain jurisdiction for the duration of this Order to enforce its terms, after which time the case shall be dismissed as to such parties with prejudice. The United States may move the Court to extend the duration of the Order in the event of noncompliance by the Bank or in the interests of justice.

21. In the event that any dispute arises concerning the interpretation of or compliance with the terms of this Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that if it reasonably believes that the Bank has violated any provision of this Order, it will provide the Bank written notice thereof and give the Bank thirty (30) days to resolve the alleged violation before presenting the matter to this Court. If the Bank fails to perform in a timely manner any act required by this Order, or the Bank acts in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity including, but not limited to, an order requiring performance of certain acts or non-performance of certain acts and an award of any damages, costs and/or attorney's fees to the United States.

22. Any time limits for performance fixed by this Order may be extended by mutual written agreement of the parties. Any other modifications to this Order may be made only upon approval of the Court, by motion by either party. The parties agree to work cooperatively to discuss any proposed modifications to this Order.

23. Each party to this lawsuit shall bear its own costs except where otherwise specified.

IT IS SO ORDERED:

This 4th day of November, 2008.



UNITED STATES DISTRICT JUDGE

By their signatures below, the parties agree to the terms of and consent to the entry of this Order.

For the United States:

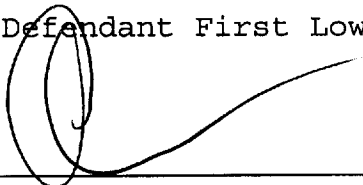
LEURA GARRETT CANARY
United States Attorney

GRACE CHUNG BECKER
Acting Assistant Attorney
General
Civil Rights Division


STEVEN H. ROSENBAUM
Chief
DONNA M. MURPHY
Deputy Chief
BURTIS M. DOUGHERTY

Attorney
Housing and Civil Enforcement
Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Northwestern Building
Washington, D.C. 20530
Burtis.m.dougherty@usdoj.gov
Phone: (202) 514-4737
Fax: (202) 514-1116

For Defendant First Lowndes Bank:



ANDREW L. SANDLER
DARREN M. WELCH
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Phone: (202) 371-7400
Fax: (202) 661-8236

APPENDIX A

Employee Acknowledgment

I acknowledge that on, _____, 2008, I was provided copies of the Consent Order entered by the Court in United States v. First Lowndes Bank, Inc., (M.D. Ala.), and the loan policy developed pursuant thereto. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX B

Employee Training Certification

I certify that on _____, 2008, I received training with respect to my responsibilities under the Consent Order entered by the Court in United States v. First Lowndes Bank, (M.D. Ala.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Equal Credit Opportunity Act and the Fair Housing Act, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX C

Release

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. First Lowndes Bank, (M.D. Ala.), and the First Lowndes Bank's payment to me of \$_____, pursuant to the Consent Order, I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to that litigation, and any other claims arising from the housing and credit discrimination alleged in that litigation up to and including the date of execution of this release, that I may have against the Defendant, First Lowndes Bank, all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and all of their past and present directors, officers, agents, managers, supervisors, shareholders and employees and their heirs, executors, administrators, successors or assigns.

Executed this ____ day of _____, 2008.

Signature

Print Name