

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

In the Matter of:

First Niagara Bank, National Association
Buffalo, New York

AA-NE-11-91

ORDER FOR A CIVIL MONEY PENALTY

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a civil money penalty proceeding against First Niagara Bank, National Association, Buffalo, New York (“Bank”), pursuant to 42 U.S.C. § 4012a(f) for a pattern or practice of failing to provide notice to borrowers, as required, that they must obtain flood insurance because the properties securing the designated loans are not covered by flood insurance or are covered by flood insurance in an amount less than is required, or failing to purchase insurance on the borrowers’ behalf as required;

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Bank, without admitting or denying any wrongdoing, desires to enter into this Consent Order (“Order”);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and the Bank that:

Article I

JURISDICTION

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2) and is a “regulated lending institution” as that term is defined at 42 U.S.C. § 4003(a)(10).

(2) Pursuant to 42 U.S.C. §§ 4003(a)(5) and 4012a(f), the Comptroller is the “appropriate Federal entity for lending regulation” to maintain an enforcement proceeding against the Bank.

Article II

ORDER FOR CIVIL MONEY PENALTY

(1) The Bank hereby consents to the payment of a civil money penalty in the amount of Ten Thousand dollars (\$10,000.00), which shall be paid upon execution of this Order.

(2) The Bank shall make payment in full by check made payable to the National Flood Insurance Program and shall deliver the payment to: National Flood Insurance Program, to the attention of Kevin Montgomery, Federal Emergency Management Agency, 1800 South Bell Street, Room 510, Arlington, VA 20598-3010.

(3) The Bank shall submit a copy of the check to Jonathan H. Rushdoony, District Counsel, Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor, New York, New York 10173.

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) and 42 U.S.C. § 4012a.

Article III

WAIVERS

- (1) By executing this Order, the Bank waives:
 - (a) the right to the issuance of a Notice under 12 U.S.C. § 1818(i) and 42 U.S.C. § 4012a(f)(4) and recognizes that the letter dated July 29, 2011 from Joel L. Denkert, Assistant Deputy Comptroller, Midsize Bank Supervision, constitutes a valid substitute notice;
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19, and 42 U.S.C. § 4012a(f)(4);
 - (c) all rights to seek judicial review of this Order;
 - (d) all rights in any way to contest the validity of this Order; and
 - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.
- (2) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Bank to agree to consent to the issuance of this Order or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of the civil money penalty proceeding contemplated by the Comptroller.

(4) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (3), shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(5) The Bank understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

/s/

10/26/11

William D. Haas
Deputy Comptroller
Midsize Bank Supervision

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/

Thomas E. Baker

10/24/11

Date

/s/

G. Thomas Bowers

10/24/11

Date

/s/

Roxanne J. Coady

10/24/11

Date

/s/

Carl A. Florio

10/24/11

Date

/s/

Carlton L. Highsmith

10/24/11

Date

/s/

Barbara S. Jeremiah

10/24/11

Date

/s/

William H. Jones

10/24/11

Date

/s/

John R. Koelmel

10/24/11

Date

/s/

George M. Philip

10/24/11

Date

/s/

Peter B. Robinson

10/24/11

Date
