

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

In the Matter of: American Express Bank, FSB Salt Lake City, Utah)))))	AA-EC-2012-116
--	-----------------------	----------------

CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”), through his authorized representatives, has examined the affairs of American Express Bank, FSB, Salt Lake City, Utah (hereinafter the “Bank”), and has identified deficiencies in the Bank’s practices that resulted in violations of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1), related to collection of consumer debt.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of a Consent Order, dated October 1, 2012 (“Stipulation and Consent”), that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated herein by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

ARTICLE I

COMPTROLLER’S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

- (1) In the collection of consumer debt from January 2003 through March 2012, the Bank misrepresented in debt solicitations to certain customers (hereinafter “Unreported Debt Customers”) that a debt settlement with the Bank would be reflected on the consumer’s credit

report and could improve the consumer's credit score despite the fact that at the time the statement was made the debt was no longer being reported by the Bank to credit reporting agencies.

(2) In the collection of consumer debt from January 1, 2003 through June 30, 2012, certain debt settlement letters sent by the Bank to customers (hereinafter "Debt Forgiveness Customers") stated that upon payment of an agreed-upon settlement amount the customer's remaining debt would be "waived," but failed to prominently disclose that payment of the full debt balance was required before the Bank would process any future credit card application.

(3) By reason of the foregoing debt collection practices described in this Article, the Bank engaged in deceptive practices in violation of Section 5 of the FTC Act.

(4) The Bank's violations of Section 5 of the FTC Act caused consumer injury or were likely to cause consumer injury.

(5) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby ORDERS that:

ARTICLE II

COMPLIANCE COMMITTEE

(1) The Board shall appoint and maintain an active Compliance Committee of at least three directors that shall be responsible for monitoring and overseeing the Bank's compliance with the provisions of this Order. The Compliance Committee shall maintain minutes of its meetings at which compliance with this Order is discussed.

(2) Within seventy-five (75) days of this Order, and within twenty (20) days after the end of each quarter thereafter, the Compliance Committee shall ensure that the Bank monitors

and reports, in writing, to the Compliance Committee on the Bank's compliance with the provisions of this Order.

(3) Within ninety (90) days of this Order, and within thirty-five (35) days after the end of each quarter thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken since the prior report (if any) to comply with each Article of this Order;
- (b) the results of those actions; and
- (c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Order.

(4) Within thirty (30) days of the receipt of the Compliance Committee's initial report and within thirty (30) days of the receipt of each quarterly report thereafter, the Board shall submit progress reports to the Examiner-in-Charge. These reports shall:

- (a) include the Compliance Committee's report to the Board for the applicable quarter, with any additional comments by the Board; and
- (b) describe any actions initiated by the Board or the Bank to comply with each Article of this Order.

ARTICLE III

COMPLIANCE WITH LAW

(1) The Board shall ensure that the Bank, its officers, agents and service providers immediately cease and desist from engaging in violations of law, rule or regulation, and shall specifically ensure that the Bank take all steps necessary to eliminate violations of Section 5 of the FTC Act and to maintain future compliance with the requirements of that Act.

ARTICLE IV

CONSUMER RESTITUTION FOR DECEPTIVE DEBT COLLECTION PRACTICES

(1) Funds from the segregated deposit account required by Paragraph (1) of Article V of this Order shall be used to make full restitution, as defined in Paragraph (2) and Paragraph (3) of this Article and in accordance with the Restitution Plan required by this Article, to each eligible Unreported Debt Customer and Debt Forgiveness Customer described in Article I of this Order.

(2) The restitution amount paid to each Unreported Debt Customer shall include, as applicable to each Unreported Debt Customer, the sum of all payments made through June 30, 2012 after receiving the Bank's debt settlement solicitation, plus interest.

(3) The restitution amount paid to each Debt Forgiveness Customer shall include, as applicable to each Debt Forgiveness Customer, the sum of:

- (a) One Hundred Dollars (\$100.00) to each Debt Forgiveness Customer who according to Bank records previously applied for and was denied new credit subsequent to settlement; and
- (b) For those Debt Forgiveness Customers who applied for new credit subsequent to settlement and then made additional payments in excess of the agreed-upon settlement amount, the full amount of any such payments plus interest.

(4) Within thirty (30) days of the date of this Order, the Bank shall develop and submit to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") for prior

determination of supervisory non-objection, a plan to provide restitution to the Unreported Debt Customers and Debt Forgiveness Customers. At a minimum, the Restitution Plan shall include:

- (a) A description of the method to be used to identify Unreported Debt Customers and Debt Forgiveness Customers;
- (b) A description of the method used to calculate the amount of restitution for the individuals so identified;
- (c) A description of the procedures for issuance and tracking of the restitution payments;
- (d) A description of the procedures for monitoring compliance with the Restitution Plan; and
- (e) A description of all other non-monetary relief to be provided.

(5) The Bank initiated and is in the process of completing a plan to provide restitution to Unreported Debt Customers and Debt Forgiveness Customers. This plan shall be incorporated into the Restitution Plan required by this Article and be subject to the requirements of this Article.

(6) The Bank's Internal Audit shall periodically conduct an assessment of the Restitution Plan and the methodology used to determine the population of Unreported Debt Customers and Debt Forgiveness Customers, the amount of restitution for each Unreported Debt Customer and Debt Forgiveness Customer, the procedures used to issue and track restitution payments, and the procedures used for reporting and requesting the reporting of updated balances to the credit reporting agencies. Such assessments shall occur at appropriate intervals during the development and execution of the Restitution Plan and within forty-five (45) days of completion of restitution, and the findings shall be memorialized in writing. Within ten (10) days of

completing each assessment, Internal Audit shall provide its written findings to the Compliance Committee, the Deputy Comptroller, and the Examiner-in-Charge.

(7) Upon receipt of a determination of supervisory non-objection to the Restitution Plan, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Restitution Plan. Any proposed changes to or deviations from the Restitution Plan shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

ARTICLE V

SEGREGATED RESTITUTION ACCOUNT

(1) Within fifteen (15) days of this Order, the Bank shall deposit into a segregated deposit account at the Bank an amount not less than six million dollars (\$6,000,000) which represents an estimate of the maximum potential restitution that may be required by Article IV of this Order; actual restitution may be a lesser amount. Additional amounts shall be deposited into this segregated deposit account if necessary to fully comply with Article IV of this Order. If the total amount required to fully comply with Article IV of this Order is less than the amount in the segregated deposit account, the excess shall be returned to the Bank's general funds.

ARTICLE VI

CONTINUING OBLIGATIONS

(1) The Bank continues to be subject to the requirement to comply with the Supervisory Agreement dated August 6, 2010.

ARTICLE VII

BANK VENDOR MANAGEMENT

(1) Within ninety (90) days of this Order, the Bank shall develop a written policy governing the management of Bank Vendors. The Board shall approve and submit this Bank

Vendor Management Policy to the Deputy Comptroller for prior determination of supervisory non-objection. At a minimum, the Bank Vendor Management Policy shall require:

- (a) An analysis, to be conducted by Corporate Compliance prior to the Bank entering into a contract with a Bank Vendor, of the capacity of the Bank Vendor to perform the marketing, sales, delivery, collection, servicing, and fulfillment of services for the product(s) in compliance with all applicable consumer protection laws and Bank policies and procedures.
- (b) For new and renewed contracts between the Bank and the Bank Vendor, provisions which set forth the responsibilities of each party, especially:
 - (i) the Bank Vendor's specific performance responsibilities and duty to maintain adequate internal controls over the marketing, sales, delivery, collection, servicing, and fulfillment of services for the products;
 - (ii) the Bank Vendor's responsibilities and duty to provide adequate training on applicable consumer protection laws and Bank policies and procedures to all Bank Vendor employees or agents engaged in the marketing, sales, delivery, collection, servicing, and fulfillment of services for the product(s);
 - (iii) granting the authority to conduct periodic onsite reviews of the Bank Vendor's controls, performance, and information systems as they relate to the marketing, sales, delivery, collection, servicing, and fulfillment of services for the product(s); and

(iv) the Bank's right to terminate the contract if the Bank Vendor materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph.

(c) Periodic onsite audit review by the Bank of the Bank Vendor's controls, performance, and information systems.

(2) Upon receipt of a determination of supervisory non-objection to the Bank Vendor Management Policy submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Bank Vendor Management Policy. Any material proposed changes or deviations from the approved Bank Vendor Management Policy shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

(3) For purposes of this Article and this Order, "Bank Vendor" refers to any third-party that provides marketing, sales, delivery, collection, servicing, and/or fulfillment of services related to consumer products, offered by or on behalf of the Bank, to Bank customers and/or other consumers.

ARTICLE VIII

OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of supervisory non-objection by the Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, or undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller or his authorized representative.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

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

In the Matter of:

American Express Bank, FSB
Salt Lake City, Utah

)
)
)
)
)

AA-EC-2012- 116

**STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), intends to impose a cease and desist order on American Express Bank, FSB, Salt Lake City, Utah (“Bank”) pursuant to 12 U.S.C. § 1818(b), for its violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), related to collection of consumer debt.

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”) and consents to the issuance of a Consent Order, dated October 1, 2012 (“Consent Order”).

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

ARTICLE I

JURISDICTION

(1) The Bank is a Federal savings association which was chartered and examined by the Office of Thrift Supervision (“OTS”) pursuant to the Home Owners’ Loan Act, as amended, 12 U.S.C. § 1461 *et seq.*

(2) Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010), all functions of the OTS related to Federal savings associations were transferred to the Comptroller.¹

(3) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(4) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(5) For purposes of, and within the meaning of 12 C.F.R. § 163.555, the Consent Order shall not be construed to be a “cease and desist order” or “consent order,” unless the Comptroller informs the Bank otherwise in writing.

ARTICLE II

CONSENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Consent Order by the Comptroller.

(2) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that said Consent Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as

¹ See Dodd-Frank Act § 312(b), 12 U.S.C. § 5412.

a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(5) The terms and provisions of this Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Stipulation or the Consent Order.

ARTICLE III

WAIVERS

- (1) The Bank, by consenting to this Stipulation, waives:
 - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Consent Order;
 - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (h), 12 C.F.R. Part 19;
 - (d) all rights to seek any type of administrative or judicial review of the Consent Order;

- (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 the Consent 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; and
- (f) any and all rights to challenge or contest the validity of the Consent Order.

ARTICLE IV

CLOSING

(1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other 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.

(2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.

(3) The Comptroller releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the Comptroller based on the banking practices described in the Comptroller's Findings set forth in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. However, the banking practices alleged in Article I of the Consent Order may be utilized by the Comptroller in other future enforcement actions against the Bank or its institution-affiliated

