

#2013-160

Amends OTS Order SE-11-014

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

In the Matter of:

EverBank
Jacksonville, Florida

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) AMENDS SE-11-014
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AMENDMENT TO APRIL 13, 2011 CONSENT ORDER

The Comptroller of the Currency of the United States of America ("Comptroller") and EverBank, Jacksonville, Florida ("Bank") hereby agree to the following modifications to Office of Thrift Supervision ("OTS") Consent Order no. SE-11-014, dated April 13, 2011 ("2011 Consent Order"). The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a Stipulation and Consent to the Issuance of an Amendment to 2011 Consent Order ("Amendment to the Consent Order"), dated October 15, 2013 ("Stipulation"), which is accepted by the Comptroller and incorporated by reference herein. Paragraphs 14 to 19 of the 2011 Consent Order are hereby superseded by this Amendment to the Consent Order. This Amendment to the Consent Order, however, does not replace the other remaining Paragraphs of the 2011 Consent Order, which shall remain in effect without modification.

WHEREAS, Paragraphs 14 to 19 of the 2011 Consent Order required the Bank, among other things, to retain an independent consultant (the "IC") to conduct an independent review of certain residential mortgage loan foreclosure actions or proceedings for borrowers who had a pending or completed foreclosure on their primary residence any time from January 1, 2009 to

December 31, 2010 (the “In-Scope Borrower Population”), the purposes of which were set forth in Paragraph 16 of the 2011 Consent Order (the “Independent Foreclosure Review”);

WHEREAS, the Bank has taken steps to comply with its obligations under Paragraphs 14 to 19 of the 2011 Consent Order;

WHEREAS, in the interest of accelerating payments to borrowers potentially affected by the practices at the Bank addressed in the 2011 Consent Order, the OCC and the Bank have agreed to amend the 2011 Consent Order;

WHEREAS, the OCC and the Bank intend that the Bank’s obligations under Paragraphs 14 to 19 of the 2011 Consent Order be replaced with the obligations specified in this Amendment to the Consent Order, and ordered pursuant to 12 U.S.C. § 1818(b), which include the Bank:

(i) making a cash payment in the amount specified herein into a Qualified Settlement Fund for distribution to the In-Scope Borrower Population in accordance with a distribution plan approved by the OCC in its discretion; and (ii) taking other loss mitigation or other foreclosure prevention actions in the amount specified herein;

WHEREAS, the amount of any payments to borrowers made pursuant to this Amendment to the Consent Order do not reflect specific financial injury or harm that may have been suffered by borrowers receiving payments, except for payments made to borrowers for which the Bank’s IC completed a file review and made a determination of error with financial harm; nor do the payments constitute either an admission or a denial by the Bank of wrongdoing or a civil money penalty under 12 U.S.C. § 1818(i);

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 I

QUALIFIED SETTLEMENT FUND AND PAYING AGENT

(1) Within thirty (30) days of this Amendment to the Consent Order, the Bank will make an initial cash payment of \$37,390,450.00, with an additional cash payment amount to be determined in accordance with the provisions of this Amendment to the Consent Order, as confirmed by the OCC, into a Qualified Settlement Fund (the “Fund”) from which payments to the In-Scope Borrower Population, which are borrowers who had a pending or completed foreclosure on their primary residence any time from January 1, 2009 to December 31, 2010, will be made pursuant to a distribution plan approved by the OCC in its discretion.

(2) Prior to the Bank’s cash payment into the Fund required under Paragraph (1) above, the Bank shall ensure that the Fund is established and a Paying Agent is retained. The Fund shall be established and is intended to be treated at all times as a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1. The Paying Agent shall serve as the “administrator” at the direction of the OCC within the meaning of Treas. Reg. § 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3). The agreement pursuant to which the Bank retains the Paying Agent shall be subject to prior no objection from the OCC and shall not be amended or modified without obtaining a prior no objection from the OCC.

(3) The Bank will be responsible for all administrative costs related to the Fund and the Paying Agent. Should errors related to payments to the In-Scope Borrower Population occur that result in losses to the Fund, the Bank will have primary responsibility to cover such losses pending determination of liability of the responsible party. The Bank may not use any funds from its payment into the Fund or interest accrued on amounts in the Fund for administrative costs or errors.

ARTICLE II

BORROWER PAYMENTS UNDER THE DISTRIBUTION PLAN

(1) Within thirty (30) days of this Amendment to the Consent Order, the Bank's IC shall complete file reviews of the previously approved In-Scope Borrower Population sample files, to include all SCRA eligible borrower files within the Bank's In-Scope Borrower Population and the Request for Review ("RFR") files.

(2) Payments to the In-Scope Population shall be made as follows:

(a) borrowers whose files were not reviewed by the Bank's IC and borrowers whose files were reviewed by the Bank's IC with no finding of error will receive a flat payment (the "Flat Payment Amount");

(b) borrowers whose file reviews were completed by the Bank's IC with a finding of error with financial harm for Categories 1 through 4 of the June 21, 2012 Financial Remediation Framework ("2012 Framework") will receive the "Dollar Payment" amount listed in the relevant category of the 2012 Framework, including equity and interest amounts where applicable;

(c) borrowers whose file reviews were completed by the Bank's IC with a finding of error with financial harm for Categories 5 through 12 of the 2012 Framework will receive, where applicable: (i) the "Dollar Payment" amount listed in the relevant category of the 2012 Framework for each finding of such error, including equity and interest amounts where applicable; and (ii) a payment equal to the amount of financial harm as determined by the IC for each finding of error for categories that do not have listed Dollar Payment amounts in the 2012 Framework. In addition, borrowers will receive the amount described in sub-paragraph (d) below;

(d) borrowers not covered under sub-paragraphs (a) and (b) above, will receive either: (i) the Flat Payment Amount; or (ii) where the IC made a finding of error with financial harm for Category 13 of the 2012 Framework, the higher of the financial harm amount calculated by the Bank's IC or the Flat Payment Amount.

(3) The OCC will direct the Paying Agent to distribute payments from the Fund to the In-Scope Borrower Population in accordance with a distribution plan approved by the OCC in its sole discretion. The Bank will not benefit from any residual funds the Paying Agent is unable to distribute to the In-Scope Borrower Population. Final disposition of any residual funds in the Fund is subject to prior no objection by the OCC.

ARTICLE III

IC REPORTS AND OCC ACCESS TO IFR INFORMATION

(1) The Bank's IC shall complete a final report containing the findings of its completed foreclosure reviews (the "Foreclosure Report"), in a format subject to prior no objection by the OCC, which shall be submitted to the Bank and the OCC. The Bank shall take all reasonable steps to work with the Bank's IC to effectuate all provisions of this Amendment to the Consent Order and to cause its IC to provide any existing information, as requested by the OCC, to assist the OCC in its analysis and public reporting of Independent Foreclosure Review related activities.

(2) Consistent with existing examination authority under 12 U.S.C. § 481, the OCC maintains the right to obtain and access all existing material, information, records and/or files used or generated by the Bank, the Bank's IC, and Independent Counsel for the IC, in connection with the 2011 Consent Order Paragraphs 14 to 19 work and this Amendment to the Consent Order.

ARTICLE IV

FORECLOSURE PREVENTION ACTIVITIES

(1) The Bank shall provide loss mitigation or other foreclosure prevention actions (“Foreclosure Prevention”) in the amount of \$44,408,629.00. Foreclosure Prevention may include the provision of cash or other resource commitments to borrower counseling or education (measured as \$7 of credit for each \$1 cash commitment).

(2) The Bank agrees to satisfy its Foreclosure Prevention obligation described in Paragraph (1) above by making a payment of \$6,344,090.00 to United States Department of Housing and Urban Development (“HUD”) approved certified organizations, such as housing counselors and national intermediaries, or other tax-exempt organizations that have as a principal mission of providing affordable housing, foreclosure prevention and/or educational assistance to low-and-moderate income individuals and families, subject to no objection by the OCC.

(3) Within ninety (90) days of this Amendment to the Consent Order, the Bank shall submit to the OCC a report, in a form and manner acceptable to the OCC, that details the payments made for which the Bank seeks credit pursuant to Paragraph (2) of this Article, including the name of the organization(s) to which the Bank has made payment(s), the date of the payment(s), and the amount of payment(s).

(4) The Bank shall take action to solicit and evaluate loan modification requests for the In-Scope Borrower Population whose foreclosure has not been completed, consistent with investor guidelines and well structured loss mitigation principles.

(5) Well structured loss mitigation actions should focus on foreclosure prevention, which should typically result in benefitting the borrower. While the Bank’s actions may be

affected by existing investor requirements, the Bank's foreclosure prevention actions should reflect the following guiding principles:

(a) preference should be given to activities designed to keep the borrower in the home;

(b) foreclosure prevention actions should emphasize affordable, sustainable, and meaningful home preservation actions for qualified borrowers;

(c) foreclosure prevention actions should otherwise provide significant and meaningful relief or assistance to qualified borrowers; and

(d) foreclosure prevention actions should not disfavor a specific geography within or among states, nor disfavor low and/or moderate income borrowers, and not discriminate against any protected class of borrowers.

(6) Within forty-five (45) days of this Amendment to the Consent Order, the Bank shall establish a special complaint resolution process for borrowers complaining about errors on credit reports.

(7) Within forty-five (45) days of this Amendment to the Consent Order, the Bank shall establish a new audit process at the point of modification, payoff, or reinstatement to validate any fees assessed and not yet collected on all loans in the In-Scope Borrower Population. Validation of fees is subject to review by the Bank's Internal Audit and Quality Control functions.

ARTICLE V

RELEASES

(1) In recognition of the Bank's cash payments of approximately \$37,390,450.00 to the Fund and \$6,344,090.00 in Foreclosure Prevention commitments made pursuant to this

Amendment to the Consent Order, under 12 U.S.C. § 1818(b), the Comptroller will not assess a civil money penalty, under 12 U.S.C. § 1818(i), or initiate any further enforcement actions against the Bank or its subsidiaries or affiliates, including for remedies available pursuant to 12 U.S.C. § 1818(b), with respect to: (a) the findings contained in Paragraphs 1 to 2 of the 2011 Consent Order; (b) the matters addressed in Paragraphs 14 to 19 of the 2011 Consent Order (including matters relating to the work or findings of the IC or IC counsel under the IFR); and (c) any other past mortgage servicing and foreclosure-related practices that are addressed by the 2011 Consent Order through the execution date of this Amendment to the Consent Order, provided that the terms of this Amendment to the Consent Order are satisfied. In addition, the Comptroller's agreement not to assess a civil money penalty in regard to points (a) and (c) above is further conditioned upon the Bank making the payments specified by this Amendment to the Consent Order.

(2) Notwithstanding any other terms of this Amendment to the Consent Order, the Comptroller specifically reserves and does not release the following:

(a) any right to institute an enforcement action for violations of the Paragraphs contained in the 2011 Consent Order, outside of Paragraphs 14 to 19 of the 2011 Consent Order;

(b) any and all claims based upon acts or omissions subsequent to the effective date of this Amendment to the Consent Order;

(c) any and all claims based upon the origination of a residential mortgage loan, or the sale or transfer of a mortgage, security, or whole loan, whether legal or equitable, to, into, or for the benefit of a mortgage-backed security, trust, or special interest entity, including

but not limited to mortgage loan securitizations and whole loan sales to such entities, except for any and all claims addressed in Paragraph (1) above;

(d) any liability arising under the Fair Housing Act, 42 U.S.C. §§ 3601, et seq., or any other statute or law that prohibits discrimination of persons based on race, color, national origin, gender, disability, or any other protected status, including the non-discrimination provisions of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq., or under the Federal Trade Commission Act, 15 U.S.C. §§ 41, et seq., or any other statute or law that prohibits unfair or deceptive practices;

(e) any and all claims against individuals, including current and former employees, agents, officers, directors, or contractors of the Bank; and

(f) any and all actions to enforce the terms and conditions of this Amendment to the Consent Order.

(3) In no event shall the Bank request or require any borrower to execute a waiver of any claims against the Bank (including any agent of the Bank) in connection with any payment or Foreclosure Prevention assistance pursuant to this Amendment to the Consent Order. However, nothing herein shall operate to bar the Bank from asserting in the future in any separate litigation, or as part of a settlement related to the Bank's foreclosure and servicing practices, any right that may exist under applicable law to offset the amounts received by a borrower through the distribution process set forth above. Nothing herein shall operate to amend or modify in any respect any preexisting settlement between the Bank or an affiliate thereof and a borrower in the In-Scope Borrower Population.

ARTICLE VI

EXTENSIONS AND COMMUNICATIONS

(1) If the Bank contends that compliance with any provision of this Amendment to the Consent Order requires an exemption or any extension of any timeframe stated within this Amendment to the Consent Order, the Board shall submit a written request to the Deputy Comptroller asking for relief. Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with a provision of this Amendment to the Consent Order, that require the Deputy Comptroller to exempt the Bank from a provision of this Amendment to the Consent Order, or that require an extension of a timeframe within this Amendment to the Consent Order. The Deputy Comptroller's decision concerning a request is final and not subject to further review.

(2) All communication regarding this Amendment to the Consent Order shall be sent to:

- (a) Deputy Comptroller for Midsize Bank Supervision
Office of the Comptroller of the Currency
400 7th Street, SW Washington, DC 20219
- (b) Midsize Thrift Examiner-in-Charge
8375 Dix Ellis Trail, Suite 403
Jacksonville, FL 32256-8273

ARTICLE VII

OTHER PROVISIONS

(1) Notwithstanding the execution of this Amendment to the Consent Order, the remaining Paragraphs of the 2011 Consent Order aside from Paragraphs 14 to 19 of the 2011 Consent Order remain in full force and effect.

(2) 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 Amendment to the Consent Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

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

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

(5) The terms and provisions of this Amendment to the Consent Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named parties to this Amendment to the Consent Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Amendment to the Consent Order.

(6) This Amendment to the Consent Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Nothing in this Amendment to the Consent Order shall affect any action against the Bank or its institution-affiliated parties by another bank regulatory agency, the United States Department of Justice, or any other law enforcement agency, to the extent permitted under applicable law.

(7) The terms of this Amendment to the Consent Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(8) Nothing in the Stipulation or this Amendment to 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 the Stipulation or this Amendment to the Consent Order.

IT IS SO ORDERED, this 15 day of October, 2013.

_____/s/_____
Morris R. Morgan
for
William D. Haas
Deputy Comptroller
Midsize Bank Supervision

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

In the Matter of:

EverBank
Jacksonville, Florida

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) AMENDS SE-11-014
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**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
AMENDMENT TO APRIL 13, 2011 CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to amend the existing Office of Thrift Supervision (“OTS”) Consent Order no SE-11-014 that was issued against EverBank, Jacksonville, Florida (“Bank”) on April 13, 2011 (“2011 Consent Order”),¹ pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of an Amendment to the 2011 Consent Order (“Amendment to the Consent Order”), dated October 15, 2013 (“Stipulation”).

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:

¹ Since July 21, 2011, the 2011 Consent Order has been administered by the Comptroller pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203, § 311, 124 Stat. 1520-21 (2010).

ARTICLE I

JURISDICTION

(1) The Bank is a Federal Savings Association within the meaning of 12 U.S.C. § 1462(f), which was chartered and examined by the 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.²

(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. §§ 1813(c) and 1818(b)(1).

(5) For the purposes of, and within the meaning of 12 C.F.R. §§ 163.555, 163.560, and 165.4, the Amendment to the Consent Order shall not be construed to be a “cease and desist order” or “consent order,” unless the OCC informs the Bank otherwise.

ARTICLE II

AGREEMENT

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

(2) The Bank consents and agrees that the Amendment to the Consent Order shall:
(a) be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2); (b) become effective upon its execution by the Comptroller through his authorized representative; and (c) be fully enforceable by the Comptroller pursuant to

² See Dodd-Frank Act § 312(b), 12 U.S.C. § 5412.

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 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 declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Amendment to the Consent Order and/or execute the Amendment to the Consent Order.

(5) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States 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.

(6) The terms and provisions of this Stipulation and the Amendment to 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 Amendment to 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 Amendment to the Consent Order.

ARTICLE III

WAIVERS

- (1) The Bank, by consenting to this Stipulation, waives:
 - (a) any and all procedural rights available in connection with the issuance of the Amendment to the Consent Order;
 - (b) 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;
 - (c) all rights to seek any type of administrative or judicial review of the Amendment to the Consent Order;
 - (d) 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 Amendment to 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
 - (e) any and all rights to challenge or contest the validity of the Amendment to the Consent Order.

ARTICLE IV

OTHER PROVISIONS

- (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, it deems it appropriate to do so to fulfill the responsibilities placed upon it 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 Amendment to 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 terms of this Stipulation and the Amendment to the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

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

_____/s/_____
Morris R. Morgan
for
William D. Haas
Deputy Comptroller
Midsize Bank Supervision

10/15/13
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/_____
Gerald Armstrong

10/14/13
Date

_____/s/_____
Robert Clements

10/15/13
Date

_____/s/_____
W. Blake Wilson

10/15/13
Date

_____/s/_____
Joseph Hinkel

10/15/13
Date

_____/s/_____
Merrick R. Kleeman

10/15/13
Date

_____/s/_____
Mitchell M. Liedner

10/14/13
Date

_____/s/_____
W. Radford Lovett, II

10/14/13
Date

_____/s/_____
Gary Meeks

10/15/13
Date

_____/s/_____
Arrington Mixon

10/15/13
Date

_____/s/_____
Robert J. Mylod

10/15/13
Date

_____/s/_____
Russell B. Newton, III

10/14/13
Date

_____/s/_____
William E. Sanford

10/14/13
Date

_____/s/_____
Richard Schifter

10/14/13
Date

_____/s/_____
Alok Singh

10/15/13
Date

_____/s/_____
Scott Stuart

10/14/13
Date