UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION, Plaintiff, v. GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P. and GATEWAY FUNDING, INC., Defendants.	)	Civil No. 08-5805

MODIFIED STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), and defendants, Gateway Funding Diversified Mortgage Services, L.P. ("Gateway") and Gateway Funding, Inc. ("GFI"), have jointly requested modification of the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Stipulated Order") entered by this Court on December 17, 2008. The Stipulated Order settled plaintiff's Complaint for Permanent Injunction and Other Equitable Relief ("Complaint") alleging that defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 701(a)(1) of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691(a)(1), and Section 202.4 of its implementing Federal Reserve Board Regulation B ("Regulation B"), 12 C.F.R. § 202.4. The parties request that several provisions of the Stipulated Order be modified to accomplish justice in this matter.

The parties, by and through their respective counsel, have agreed to entry of the Modified Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief

("Modified Order") by this Court, without trial or adjudication of any issue of fact or law to settle and resolve all matters of dispute arising from the conduct alleged in the Complaint. Defendants do not admit liability for any of the matters alleged in the Complaint. Plaintiff and defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of the Modified Order, and defendants waive any right that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412. Defendants have waived service of the Summons and Complaint.

The parties having requested the Court to enter the Modified Order, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties.

2. The Complaint states a claim upon which relief may be granted against the defendants under Sections 5(a), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 56(a), and under the ECOA, 15 U.S.C. §§ 1691-1691f, and Regulation B, 12 C.F.R. § 202.

3. The activities of defendants are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, as amended.

4. Entry of the Modified Order is in the public interest.

5. Since the Stipulated Order was entered, the FTC and defendants have consulted concerning implementation of its requirements. In light of these developments, the circumstances of this case have changed such that modification of the Stipulated Order is necessary and appropriate.

ORDER

I. DEFINITIONS

For purposes of the Modified Order:

a. "applicant" is synonymous in meaning and equal in scope to the definition of the term in § 202.2 of Regulation B, and means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit, including guarantors, sureties, endorsers and similar parties;

b. "branch" means any of the offices from which Gateway loan originators originate loans, including Gateway's headquarters office;

c. "branch manager" means any Gateway loan originator with supervisory authority over any branch;

d. "credit transaction" is synonymous in meaning and equal in scope to the definition of the term in § 202.2 of Regulation B, and means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures);

e. "direct lending" refers to mortgage loans originated by Gateway's loan originators;

f. "discretionary price" means the amount by which the price of a mortgage loan exceeds ("overage") or is less than ("underage") the risk-based price for that loan ***and*** that a loan originator may negotiate, modify, waive, adjust, or otherwise charge differentially to different applicants;

g. "ECOA" refers to the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691–1691f, as amended;

h. "Gateway" refers to Gateway Funding Diversified Mortgage Services, L.P., and its successors and assigns;

i. "GFI" refers to Gateway Funding, Inc., and its successors and assigns;

j. "loan originator" means any employee of Gateway who originates mortgage loans on Gateway's behalf, including but not limited to loan officers and branch managers;

k. "middle manager" means any Gateway employee who directly reports to a senior manager;

l. "mortgage loan" means any closed-end loan secured or to be secured by residential real property;

m. "nondiscretionary markup" means the amount by which the price of a mortgage loan exceeds the risk-based price and that a loan originator may ***not*** negotiate, modify, waive, adjust, or otherwise charge differentially to different applicants;

n. "Regulation B" refers to Federal Reserve Board Regulation B, 12 C.F.R § 202, as amended;

o. "risk-based price" refers to the mortgage loan price as determined by the credit characteristics of the applicant and the underwriting characteristics of the loan;

p. "senior manager" means Gateway's Chief Executive Officer and any Gateway department or division head who directly reports to Gateway's Chief Executive Officer; and

q. "wholesale lending" refers to mortgage loans funded by Gateway that are originated by brokers.

II. INJUNCTION

IT IS THEREFORE ORDERED that defendants, and each of them, their successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of the Modified Order by personal service or otherwise, directly or through any partnership, corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined, in connection with Gateway's direct or wholesale lending operations, from:

A. Engaging in any act or practice that discriminates against an applicant on the basis of race or national origin regarding any aspect of a credit transaction, including by originating, approving, or funding mortgage loans for which African-American or Hispanic applicants pay higher prices than non-Hispanic white applicants that are not justified by the underwriting risk of the loans or the credit characteristics of the applicants; and

B. Failing otherwise to comply with the ECOA, 15 U.S.C. § 1691-1691f, as amended, and Regulation B, 12 C.F.R. § 202, as amended.

III. DEFENDANTS' DISCRETIONARY PRICING POLICY

IT IS FURTHER ORDERED that, beginning thirty (30) days from entry of the Modified Order and until defendants have submitted to counsel for the Commission the certification required by Section V.B of the Modified Order, defendants and their successors and assigns are hereby permanently restrained and enjoined from:

A. Failing to designate a single senior manager as their fair lending compliance officer;

B. Charging any applicant an underage; provided, however, that defendants may charge an applicant an underage if the loan originator for that mortgage loan:

1. Documents in writing that:

   a. the applicant is unable to satisfy the mortgage loan's monthly payment requirements in the absence of an underage; or

   b. the applicant has access to an equal or more favorable offer from another creditor; and

2. Creates a contemporaneous written record of the specific reason for the exception and causes that written record and all supporting documentation to be included with defendants' records of the mortgage loan; and

3. Obtains written and dated approval for the exception from the fair lending compliance officer in advance of charging the underage;

C. Charging any applicant an overage in excess of one-quarter percent (0.25%) of the amount of the applicant's mortgage loan; provided, however, that nothing in this Section prohibits defendants from charging applicants a nondiscretionary markup so long as defendants

do not charge the nondiscretionary markup to applicants in a manner that violates Section II of the Modified Order; and

D. Failing to create and maintain accurate electronic records of all underage exceptions requested, the action taken by the fair lending compliance officer on each such request, and the race and national origin of the applicant for whom each exception was requested.

IV. THIRD-PARTY CONSULTANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of the Modified Order, defendants and their successors and assigns are hereby permanently restrained and enjoined from failing to:

A. Submit for approval to counsel for the Commission, within forty-five (45) days of the entry of the Modified Order, the name and resumé of a qualified, objective, third-party professional who has extensive experience in developing statistical models and conducting regression analyses that are designed to test for racial and/or national origin disparities in loan pricing, to serve as an objective consultant for purposes of the Modified Order (the "Third-Party Consultant"), and retain the Third-Party Consultant within five (5) days of receiving a notice of approval of the proposed Third-Party Consultant from counsel for the Commission as provided by Section IV.A.1:

1. The proposed Third-Party Consultant shall be subject to approval by counsel for the Commission, which approval shall not be unreasonably withheld. Counsel for the Commission shall notify defendants of their approval or rejection of the proposed Third-Party Consultant within twenty (20) days of defendants' submission of the proposed Third-Party

Consultant's name and resumé to counsel for the Commission. Counsel for the Commission may, at its discretion and expense, interview the proposed Third-Party Consultant during this twenty (20) day period;

2. If counsel for the Commission rejects the proposed Third-Party Consultant, defendants shall provide counsel for the Commission with the name and resumé of another proposed Third-Party Consultant within twenty (20) days of receiving a notice of rejection of the proposed Third-Party Consultant from counsel for the Commission. The approval and retention of the proposed Third-Party Consultant shall then proceed pursuant to the procedures set forth in this Section;

3. If, at any time, defendants determine it is necessary to replace the Third-Party Consultant, defendants shall provide counsel for the Commission with written notification of the reasons for this determination and the name and resumé of the proposed replacement Third-Party Consultant. The approval and retention of the replacement Third-Party Consultant shall then proceed pursuant to the procedures set forth in this Section; and

4. Defendants' retention of the Third-Party Consultant shall be with the understanding that the Third-Party Consultant will at all times perform the duties set forth in the Modified Order in an objective, unbiased and independent manner, and that the Third-Party Consultant will cooperate with counsel for the Commission and appear at such places and times as counsel for the Commission shall reasonably request, after written notice, to answer questions regarding the fair lending monitoring program required by Section V of the Modified Order, the annual assessments required by Section VI of the Modified Order, and to address such other matters as may be reasonably requested by the FTC;

B. Provide the Third-Party Consultant with access to any data, documents, or other material that the Third-Party Consultant reasonably believes is necessary to carry out his or her duties under the Modified Order; and

C. Pay the Third-Party Consultant's salary, fees and/or expenses.

V. FAIR LENDING MONITORING PROGRAM

IT IS FURTHER ORDERED that, beginning one hundred eighty (180) days from the date of entry of the Modified Order and for a period of five (5) years from the date of entry of the Modified Order, defendants and their successors and assigns are hereby permanently restrained and enjoined from failing to:

A. Have developed and implemented a reasonable fair lending monitoring program ("Monitoring Program") sufficient to ensure that defendants price mortgage loans without regard to the applicants' race, national origin or other prohibited bases under the ECOA and Regulation B. The Monitoring Program shall be prepared by the Third-Party Consultant and shall set forth:

1. Effective fair lending policies and procedures sufficient to ensure compliance with all provisions of the ECOA and Regulation B. These policies and procedures shall include but not be limited to policies and procedures to prevent any applicant from being denied a mortgage loan or being charged a higher price for a mortgage loan based on race or national origin or any other basis prohibited by Section 701(a) of the ECOA, 15 U.S.C. § 1691(a), and Section 202.4 of Regulation B, 12 C.F.R. § 202.4. These policies and procedures shall not affect Gateway's ability to make denials of mortgage loans or determine prices of mortgage loans that are justified by the underwriting risk of the loans or the credit characteristics of the applicants;

2. A comprehensive system for the Third-Party Consultant to perform detailed, periodic fair lending monitoring analyses and reviews sufficient to ensure that mortgage loans are not priced in a manner that violates the ECOA or Regulation B, which analyses shall include but not be limited to examinations of whether there are disparities in discretionary prices charged to African-American or Hispanic applicants as compared to non-Hispanic white applicants in Gateway's:

a. Overall direct lending;

b. Overall wholesale lending;

c. Direct lending within each branch; or

d. Direct lending by each loan originator; and

3. Policies and procedures for taking appropriate remedial measures if the analyses described in Section V.A.2 reveal disparities in the discretionary prices charged to African-American and Hispanic applicants as compared to non-Hispanic white applicants. These policies and procedures shall include but not be limited to detailed corrective actions to be taken if pricing disparities are found, including verbal or written counseling; fair lending re-training; enhanced scrutiny of loans originated by the branch and/or loan originator; limiting or eliminating pricing discretion at the branch, by the loan originator, or as otherwise appropriate; termination of employment; and providing consumer refunds. The specific corrective action pursued shall depend, among other things, on the size and scope of the disparity and its persistence, and the prior conduct of the branch manager or loan originator involved.

B. Obtain from the Third-Party Consultant within one hundred eighty (180) days from the date of entry of the Modified Order a certification stating that defendants have

sufficiently implemented the Monitoring Program to provide reasonable assurance that defendants are pricing mortgage loans without regard to the applicants' race, national origin or other prohibited bases under the ECOA and Regulation B. Upon submission of this certification to counsel for the Commission, defendants shall no longer be subject to the restrictions on discretionary pricing set forth in Section III of the Modified Order, provided, however, that defendants' obligation to comply with Section III, IV and V of the Modified Order is at all times in addition to and not in lieu of defendants' obligation to comply with Section II of the Modified Order.

VI. ANNUAL ASSESSMENTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of the Modified Order, defendants and their successors and assigns are hereby permanently restrained and enjoined from:

A. Failing to obtain from the Third-Party Consultant annual assessments and reports ("Assessments"). The reporting period for the Assessments shall cover: (1) December 17, 2008 to September 30, 2009 for the initial Assessment, and (2) each one year period thereafter. Defendants shall submit the initial Assessment to counsel for the Commission ninety (90) days after the date of submission of the certification required by Section V.B of the Modified Order to counsel for the Commission. Defendants shall submit each subsequent Assessment to counsel for the Commission ninety (90) days after the date the reporting period closes. Each Assessment shall:

1. Describe any changes made to the Monitoring Program during the reporting period, and assess whether the defendants have sufficiently implemented the

Monitoring Program to provide reasonable assurance that defendants are pricing mortgage loans without regard to the applicants' race, national origin or other prohibited bases under the ECOA and Regulation B;

2. Report the results of the fair lending monitoring analyses and reviews performed by the Third-Party Consultant pursuant to the Monitoring Program, which analyses shall include loans originated during the applicable reporting period;

3. Provide a description of the methodology utilized in performing the fair lending monitoring analyses and arriving at the results, as well as copies of the data, computer programs and statistical output necessary to independently replicate the Third-Party Consultant's analyses and results; and

4. Report the remedial measures, if any, the Third-Party Consultant considers necessary to ensure that defendants price mortgage loans without regard to the applicants' race, national origin or other prohibited bases under the ECOA and Regulation B;

5. If applicable, provide a description of the methodology utilized in performing any consumer refund analyses and arriving at the results, as well as copies of the data, computer programs and statistical output necessary to independently replicate the Third-Party Consultant's analyses and results; and

B. Failing to undertake the remedial measures set forth in the Third-Party Consultant's Assessments.

VII. FAIR LENDING TRAINING

IT IS FURTHER ORDERED that defendants and their successors and assigns shall, for a period of three (3) years from the date of entry of the Modified Order, continuously operate and

maintain a mandatory fair lending training program. The content and implementation of the training must be fully documented in writing. The training shall specifically address the following:

A. All aspects of the prohibition against discrimination in Section 701(a) of the ECOA, 15 U.S.C. § 1691(a), and Section 202.4 of Regulation B, 12 C.F.R. § 202.4;

B. The Modified Order, a copy of which shall be included in the written materials;

C. The monitoring defendants will conduct pursuant to the Modified Order to ensure that applicants are treated fairly with respect to the pricing of loans; and

D. The array of remedial steps, including but not limited to those set forth in Section V.A.3 of the Modified Order, that may be taken if disparities are identified by the monitoring.

All branch managers and loan originators shall continue to receive fair lending training within forty-five (45) days of their start date. Within thirty (30) days of defendants' submission of the certification required by Section V.B of the Modified Order, all branch managers and loan originators shall receive updated fair lending training to address the Modified Order and the Monitoring Program prepared by the Third-Party Consultant pursuant to Section V of the Modified Order.

VIII. DATA INTEGRITY

IT IS FURTHER ORDERED that defendants and their successors and assigns shall for a period of three (3) years from the date of entry of the Modified Order continuously operate and maintain a comprehensive data integrity program that is designed to ensure the accuracy and completeness of the data and other information that Gateway collects regarding mortgage loan applicants, loan originator compensation, and mortgage loan pricing. The content and

implementation of this program must be fully documented in writing, and defendants shall ensure that any data integrity problems are promptly and thoroughly corrected.

IX. RIGHT TO REOPEN

IT IS FURTHER ORDERED that :

A. In Section VI of the Stipulated Order, the Court entered a judgment in the amount of $2,900,000 (two million, nine hundred thousand dollars) as equitable monetary relief jointly and severally against defendants and in favor of the FTC. The Court suspended the judgment, which is still in full force and effect, for less than the full amount. The FTC's agreement to Section VI of the Stipulated Order was expressly premised upon the truthfulness, accuracy and completeness of each defendant's financial condition, as represented in each defendant's sworn financial statements and the supporting documents submitted to the Commission. The financial statements contain material information upon which the FTC relied in negotiating and agreeing to Section VI of the Stipulated Order. If, upon motion by the FTC, this Court finds that any defendant failed to disclose any material asset or materially misstated the value of any asset in the financial statements described above, made any other material misstatement or omission in the financial statements described above, the Court shall lift the suspension of the $2,900,000 (two million, nine hundred thousand dollars) judgment, less any amounts previously paid by defendants to the Commission. *Provided, however*, that:

1. In all other respects the Modified Order shall remain in full force and effect unless otherwise ordered by the Court; and
2. Proceedings instituted under this Section would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law,

including any other proceedings that the FTC may initiate to enforce the Modified Order;

B. Each party shall bear its own costs and attorney's fees incurred in connection with this action; and

C. For the purpose of any subsequent proceedings to enforce payments required by the Modified Order, including but not limited to, a non-dischargeability action filed in a bankruptcy proceeding, defendants waive any right to contest the allegations in the Complaint.

X. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that defendants, and their successors and assigns, for the purpose of monitoring and investigating compliance with any provision of the Modified Order:

A. Shall provide one hundred and eighty (180) days after the date of entry of the Modified Order, and annually thereafter for a period of five (5) years, a written report to the Commission, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with the Modified Order. This report shall include, but not be limited to:

1. Defendants' efforts to comply with the requirements of the Modified Order, an assessment as to the extent to which each requirement was met, and an explanation as to why any particular requirement was not met;

2. The certification required by Section V.B of the Modified Order;

3. If applicable, any remedial measures taken pursuant to Section VI of the Modified Order; and

4. A copy of each acknowledgment of receipt of the Modified Order, obtained

pursuant to Section XIII of the Modified Order;

B. Shall, for a period of five (5) years from the date of entry of the Modified Order, notify the Commission of any changes in Gateway's or GFI's corporate structure that may affect compliance obligations arising under the Modified Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to the Modified Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after obtaining such knowledge; and

C. Shall, for the purposes of the Modified Order, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: *FTC v. Gateway Funding Diversified Mortgage Services L.P. and Gateway Funding, Inc.*

XI. RECORD KEEPING AND COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of the Modified Order:

A. Defendants, and their successors and assigns, shall maintain business records demonstrating compliance with the terms and provisions of the Modified Order;

B. Defendants, and their successors and assigns, shall, within twenty (20) days of

receipt of written notice from a representative of the Commission, submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in defendants' direct or indirect control to inspect the business operation; and

C. The Commission is authorized to monitor compliance with the Modified Order by all other lawful means, including but not limited to obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36 and 45.

XII. DISTRIBUTION OF MODIFIED ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of the Modified Order, defendants, and their successors and assigns, shall deliver a copy of the Modified Order to each of their officers, agents, servants, employees, and attorneys. For current personnel, delivery shall be within thirty (30) days of the entry of the Modified Order. For new personnel, delivery shall occur prior to them assuming their responsibilities. Defendants shall secure a signed and dated statement acknowledging receipt of a copy of the Modified Order, within thirty (30) days of delivery, from all new personnel, senior managers and middle managers receiving a copy of the Modified Order pursuant to this Section.

XIII. ACKNOWLEDGMENT OF RECEIPT OF MODIFIED ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that defendants, within five (5) business days of receipt of the Modified Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of the Modified Order.

XIV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of construction, modification and enforcement of the Modified Order.

XV. FINAL JUDGMENT AND ORDER

The parties, by their respective counsel, hereby consent to the terms and conditions of the Modified Order as set forth above and consent to the entry thereof.

SO ORDERED.

Dated this 21ST day of JANUARY, 2010.

Jan E. DuBois
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR THE PLAINTIFF FEDERAL TRADE COMMISSION

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