UNITED STATES OF AMERICA
BUREAU OF CONSUMER FINANCIAL PROTECTION

ADMINISTRATIVE PROCEEDING
File No. 2020-BCFP- 0006

In the Matter of:

Prime Choice Funding, Inc.

CONSENT ORDER

The Bureau of Consumer Financial Protection (Bureau) has reviewed certain direct-mail mortgage advertising activities of Prime Choice Funding, Inc. (Prime Choice or Respondent, as defined below) and identified violations of § 1026.24 of Regulation Z, 12 C.F.R. § 1026.24, the implementing regulation of the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601–1667f; § 1014.3 of the Mortgage Acts and Practices—Advertising Rule (MAP Rule or Regulation N), 12 C.F.R. § 1014.3; and §§ 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536. Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order.

I.

Overview

1. Prime Choice is a mortgage broker and lender that offers and provides mortgages guaranteed by the United States Department of Veterans Affairs (VA). Sometimes, it has acted as the creditor, providing loans itself; in other situations, it has acted as a broker, arranging for another creditor to provide loans.

2. Prime Choice advertises these mortgage products to consumers through direct-mail advertising campaigns.

3. Prime Choice has sent consumers millions of advertisements that violate federal law because of misleading and deceptive statements and inadequate disclosures.

4. The Bureau brings this action to stop Prime Choice from distributing advertisements with misleading and deceptive statements and inadequate disclosures to servicemembers, veterans, and other consumers.

II.

Jurisdiction

5. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565; § 108 of the Truth in Lending Act, 12 U.S.C. § 1607; and § 626 of the Omnibus Appropriations Act of 2009, as

amended by § 1097 of the CFPA, 12 U.S.C. § 5538.

III.

Stipulation

6. Respondent has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated July 13, 2020 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau's jurisdiction over Respondent and the subject matter of this action.

IV.

Definitions

7. The following definitions apply to this Consent Order:

   a. "Advertising Compliance Official" means an individual designated by Respondent as the person responsible for performing the tasks and duties required under Paragraph 151. The Advertising Compliance Official must be a director or senior-level executive (e.g., president, chief executive officer, chief financial officer, chief operating officer, chief information officer, senior vice president, or managing member)

of Respondent, or an individual who reports directly to the president, chief executive officer, managing member, or board of directors of Respondent.

b. "Clearly and Prominently" means the disclosure must be in a font size of at least 10 points; on the same side of the page as the term, if any, that triggers the disclosure; in print that contrasts with the background on which it appears; presented before the consumer incurs any financial obligation; in an understandable language and syntax; and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.

c. "Effective Date" means the date on which the Consent Order is issued.

d. "Enforcement Director" means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or her delegate.

e. "Exemplar" means an example of an advertisement fully populated with the terms contained in the advertisement as sent, posted, published, or disseminated to a consumer.

f. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another

governmental agency brought against Respondent based on substantially the same facts as described in Section V of this Consent Order.

g. "Relevant Period" includes from January 1, 2016, to the Effective Date.

h. "Respondent" means Prime Choice Funding, Inc., and its successors and assigns.

V.

Bureau Findings and Conclusions

The Bureau finds the following:

8. Prime Choice is a California corporation with its principal place of business in Tustin, California.

9. Prime Choice is licensed as a mortgage broker or lender in about 35 states and the District of Columbia.

10. Prime Choice is a "person," as defined in the CFPA, 12 U.S.C. § 5481(19), Regulation Z, 12 C.F.R. § 1026.2(a)(22), and the MAP Rule, 12 C.F.R. § 1014.2, because it is a corporation.

11. During the Relevant Period, Prime Choice has been a "covered person" under the CFPA, 12 U.S.C. § 5481(6)(A), because it is a person that engages in offering and providing residential-mortgage loans, which are "consumer

financial product[s] or service[s]" under the CFPA. 12 U.S.C. § 5481(5), (6), (15)(A)(i).

12. During the Relevant Period, Prime Choice has been subject to the MAP Rule because it is a person over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act, 15 U.S.C. §§ 41–58. 12 C.F.R. § 1014.1. The MAP Rule is a Federal consumer financial law. 12 U.S.C. § 5481(14).

13. Prime Choice provides "mortgage credit product[s]," as that term is defined in the MAP Rule. 12 C.F.R. § 1014.2.

14. Prime Choice's mortgage advertisements are "commercial communications" regarding a term of a "mortgage credit product," as those terms are defined in 12 C.F.R. § 1014.2.

15. During the Relevant Period, Prime Choice has offered "closed-end credit" in the form of mortgage loans to "consumers," as those terms are defined in Regulation Z. 12 C.F.R. § 1026.2(a)(10) & (11).

16. Prime Choice's mortgage advertisements are advertisements for "closed-end credit," as that term is defined in Regulation Z. 12 C.F.R. § 1026.2(a)(10).

17. Prime Choice offers consumer mortgages, including mortgages guaranteed by the VA.

18. Prime Choice's principal means of advertising VA-guaranteed mortgages is through direct-mail advertisements sent to consumers, including veterans and servicemembers.

19. Since January 2016, Prime Choice has mailed millions of mortgage advertisements to consumers in about 35 states and the District of Columbia.

20. Hundreds of thousands of consumers have received at least one of Prime Choice's direct-mail advertisements, and thousands of consumers have obtained mortgages through Prime Choice.

False, Misleading, and Inaccurate Representations

21. Federal consumer financial law contains numerous provisions banning the use of misleading and deceptive statements in mortgage advertisements.

22. Despite those prohibitions, Prime Choice was responsible for both the content of, and the dissemination of, numerous mortgage advertisements during the Relevant Period that contained false, misleading, and inaccurate statements, as described below.

False, Misleading, and Inaccurate Representations About Cost and Other Credit Terms

23. Most of Prime Choice's mortgage advertisements stated specific credit terms, such as an interest rate, annual percentage rate (APR), payment amount, index, margin, or closing costs.

24. By stating specific credit terms in its advertisements, Prime Choice represented, expressly or by implication, that it arranged or offered a mortgage with those credit terms.

25. In fact, Prime Choice did not arrange or offer mortgages with the specific credit terms stated in many of those advertisements.

26. In numerous instances, Prime Choice misrepresented the actual credit terms applicable to the mortgages that it would arrange or offer.

27. Numerous Prime Choice mortgage advertisements described mortgages with a simple interest rate and APR combination that, on the date of the advertisement, Prime Choice was not actually prepared to arrange or offer.

28. For example, Prime Choice advertisements sent to 84,000 consumers in October 2018 advertised a variable-rate mortgage with a fixed interest rate of 2.625% for the first five years and an APR of 3.375%.

29. In fact, the advertised APR was not correct for any loan that Prime Choice was prepared to arrange or offer because it did not take into account the fully indexed rate, required discount points, or origination, underwriting, or funding fees.

30. The actual APR for this loan, calculated in accordance with Regulation Z and taking into account the fully indexed rate, required discount points, and origination, underwriting, and funding fees, was at least 4.042%.

31. Accordingly, Prime Choice misrepresented the actual APR for loans offered in these advertisements.

32. Numerous Prime Choice mortgage advertisements misrepresented the payment amount applicable to the advertised loan.

33. For example, in an advertisement sent to a consumer in July 2016, Prime Choice misstated the payment amounts that would apply to the advertised loans. The advertisement stated that a consumer seeking a loan amount of $366,715 could obtain a 2.75% APR fixed-rate loan with a payment amount of $840, and that the consumer could obtain an additional $30,000 in cash for a total new payment amount of $909. Those payment amounts were false; the actual minimum payments that would apply to the advertised loans were each at least $600 more than the advertised payment amounts.

34. Numerous Prime Choice mortgage advertisements misrepresented the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage.

35. For example, in advertisements sent to more than 87,000 consumers in April 2019, Prime Choice stated: “You have been pre-selected for a U.S. Department of Veteran Affairs program that allows you to combine your mortgage and other debt, plus get an additional $27,500 in unrestricted cash today for only $125.41 per month.” But in order for the consumer to

"combine [their] mortgage and other debt" and obtain $27,500 in cash, the consumer would have to have more than $27,500 in equity in their home—a factor that Prime Choice did not take into consideration when selecting the recipients of the advertisement. The representation that $27,500 in cash was available was likely false for many consumers.

36. Moreover, there was no way the consumer could obtain $27,500 in cash on the same day as the advertisement, despite the representation that the cash could be obtained "today."

37. Numerous Prime Choice mortgage advertisements misrepresented variable-rate loans as "fixed" rate loans.

38. For example, Prime Choice advertisements sent to 99,200 consumers in July 2016 used the word "fixed" in bold font and capitalized letters next to the advertised interest rate on the front, but in fine print on the back, indicated that the advertised loan was, in fact, a variable-rate mortgage.

39. In these advertisements, the phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" did not appear before the first use of the word "fixed," nor was it at least as conspicuous as any use of the word "fixed" in the advertisements.

40. In these advertisements, each use of the word "fixed" to refer to a rate or payment was not accompanied by an equally prominent and closely

proximate statement of the period for which the rate or payment would be fixed and the fact that the rate may vary or the payment may increase after that period.

41. Numerous Prime Choice mortgage advertisements misrepresented the existence and amount of fees or costs to the consumer.

42. For example, Prime Choice advertisements sent to 99,200 consumers in July 2016 prominently featured the words "NO CLOSING COSTS" on the front page of the advertisements, in bold, capitalized letters, along with an advertised APR of 2.75%.

43. But consumers could not obtain a loan from Prime Choice with an APR of 2.75% without paying closing costs. Therefore, in connection with the loan that Prime Choice was advertising, the statement "NO CLOSING COSTS" was false.

44. Numerous Prime Choice mortgage advertisements contained inaccurate disclosures that misrepresented certain factors used to determine the variable rate applicable to the advertised mortgage, including the applicable index, margin, or rate-increase caps.

45. For example, Prime Choice advertisements sent to 84,000 people in October 2018 stated that the margin was fixed at 1.75%. That statement was false

because the margin for the loans offered in those advertisements was in fact 2%.

46. Consumers who received the advertisements described in Paragraphs 27–45 were likely to be misled by them.

47. The advertisements were also likely to affect consumers' conduct or decisions with regard to obtaining a loan.

False and Misleading Representations Related to the Consumer's Finances or Qualification for the Advertised Loan

48. Numerous Prime Choice mortgage advertisements misrepresented the consumer's likelihood of obtaining the advertised mortgage or a specific credit term, including whether the consumer had been preapproved or qualified for the advertised product or term.

49. For example, numerous Prime Choice advertisements stated that the recipients of the advertisements had been "pre-selected for a U.S. Department of Veteran Affairs program" to obtain the advertised loan under the terms stated in advertisement. But that statement was false because those consumers had not actually been pre-selected for the advertised product or the terms of that product.

50. In another example, Prime Choice advertisements sent to 321,000 consumers in November and December 2018, prominently labeled "URGENT

NOTICE," included a quote from forbes.com stating that the Federal Reserve "expects three or more rate increases in 2018" and stated: "Based on our information, this WILL affect your monthly budget." The advertisements further stated: "You have been preselected and already have what it takes to qualify" for the advertised loan products. These statements were misleading because Prime Choice did not have specific information about the finances of the consumer and the recipients had not been preselected.

51. Numerous Prime Choice mortgage advertisements also contained misleading comparisons between hypothetical credit terms and the terms of the advertised product.

52. Specifically, Prime Choice advertisements sent to more than 30,000 consumers in March 2018 made a comparison between a hypothetical payment ($664) and interest rate (19.90%) for the consumer's current debt, and an advertised payment amount ($121) and interest rate (2.625% / 3.25% APR) for the advertised loan.

53. The payment amount and interest rate for the advertised loan were not available for the full period of the loan.

54. The advertisements did not include a clear and conspicuous comparison to each simple interest rate that would apply over the term of the loan or the

amount of each payment that would apply over the term of the loan.

55. Consumers who received the advertisements described in Paragraphs 48–54 were likely to be misled by them.

56. The advertisements were also likely to affect consumers' conduct or decisions with regard to obtaining a loan.

False and Misleading Representations About an Affiliation with the Government

57. Numerous Prime Choice mortgage advertisements falsely represented, directly or by implication, through the use of formats, symbols, or logos that resemble those of the Internal Revenue Service (IRS), that Prime Choice was affiliated with the government or that the advertised product related to a federal tax benefit, or was endorsed, sponsored by, or affiliated with the IRS.

58. For example, Prime Choice advertisements sent to 161,000 consumers between June 2018 and January 2019 were formatted with text boxes that strongly resembled an IRS form; were titled "Loan Review Notification | Tax Cuts and Jobs Act 2017"; and were labeled "Form 2017-1 Notification of Eligibility," using much larger font for the alleged form number (2017-1)—a distinctive format used by the IRS. They also included the year "2017" printed in block letters with the "20" in white and the "17" in black, another distinctive format used by the IRS.

59. In fact, Prime Choice was not affiliated with the government and the products offered in these advertisements did not relate to any federal tax benefits, nor were the products endorsed by, sponsored by, or affiliated with the IRS.

60. Consumers who received the advertisements described in Paragraphs 57–59 were likely to be misled by them.

61. The advertisements were also likely to affect consumers' conduct or decisions with regard to obtaining a loan.

False and Misleading Representations About a Property Assessment

62. Numerous Prime Choice mortgage advertisements misrepresented that the advertisements contained property assessments, that the sender had conducted or obtained a property assessment, and that the loan terms offered in the advertisement were based on a property assessment.

63. Specifically, Prime Choice advertisements sent to more than 30,000 consumers in March 2018 were captioned "RE: Property Assessment," and featured a photograph of the recipient's property. Both the caption and photo were visible through the envelopes and on the face of the advertisements.

64. There was no other text on the outside of the envelopes to indicate that they were, in fact, mortgage advertisements and were not directly related to a property assessment of the property in question.

65. The net impression of the mailers, from the outside of the envelope, was that they contained a property assessment or were a response to such an assessment. As seen from the outside of the envelopes, these mailers were likely to mislead a consumer acting reasonably under the circumstances to believe that the mailers contained or were in response to a property assessment of the featured property.

66. Once the consumer opened the envelope, the contents of the enclosed advertisement gave the net impression that Prime Choice had obtained an assessment of the consumer's property featured in the advertisement and that the proposed loan terms were based on that assessment. The document title, "RE: Property Assessment," and the photograph of the property, both at the top of the advertisement, were likely to mislead a consumer acting reasonably under the circumstances to believe that Prime Choice had obtained the property assessment or that the mailing was in response to an assessment of this property, and that the loan terms promoted in the advertisement were based on that assessment.

67. Consumers who received the advertisements described in Paragraphs 62–66 were likely to be misled by them.

68. The advertisements were also likely to affect consumers' conduct or decisions with regard to obtaining a loan.

Inadequate Disclosures

69. Most of Prime Choice's mortgage advertisements stated a period of repayment, payment amount, finance charge, or simple annual rate of interest. Under certain sections of Regulation Z, including § 1026.24(c), (d), and (f), the use of these terms triggers specific disclosure requirements. Many of the advertisements did not include the other disclosures that are required, or did not include them in the manner required.

70. Numerous Prime Choice mortgage advertisements stated a simple annual interest rate more conspicuously than the APR.

71. Specifically, Prime Choice advertisements sent to 99,600 consumers in February 2017 stated a simple annual rate of 3.25% in bold font in the first paragraph of the letter, and the APR was only stated in smaller, not-bolded font elsewhere on the page.

72. Numerous Prime Choice mortgage advertisements stated the period of repayment or the amount of a payment, but failed to state the terms of repayment reflecting the consumer's repayment obligations over the full term of the loan.

73. For example, Prime Choice advertisements sent to more than 400,000 consumers in October 2017 stated a payment amount based on a discounted, introductory rate of 2.25% that would apply for the first three years. After

the first three years, the rate would rise based on the applicable index and margin, which was at least 2.96% as of the date of the advertisements. Thus, higher monthly payments would apply for the remaining term of the loan, but the advertisements did not state the number and period of the subsequent payments and the amounts of those payments. The advertisements also failed to state that the term of the advertised loan was 30 years.

74. Numerous Prime Choice advertisements for a mortgage loan for which more than one interest rate would apply stated a simple annual rate of interest, but, for variable-rate transactions, failed to state a rate determined by adding an index and margin, based on a reasonably current index and margin; failed to state the period during which each simple annual rate of interest would apply; failed to state an accurate APR for the loan because the stated APR was not correctly calculated under Regulation Z, 12 C.F.R. §§ 1026.17(c) and 1026.22; or failed to state these terms clearly and conspicuously.

75. As an example of the various deficiencies described in Paragraph 74, Prime Choice advertisements for a variable-rate mortgage sent to 137,000 people in February 2018 stated an introductory annual rate of interest of 2.625% that applied to the first three years of the advertised loan.

76. Although a variable rate applied to the remaining term of the loan, the advertisements failed to state a rate determined by adding an index and margin, based on a reasonably current index and margin.

77. The advertisements were dated February 15, 2018; the index during the 60-day period before that date was at least 1.70%; the margin was 1.75%; and thus the fully indexed rate, based on a reasonably current index and margin, was at least 3.45%.

78. The advertisements did not state that rate, or any other rate determined by adding an index and margin, based on a reasonably current index and margin.

79. The only period stated in the advertisements was the initial three years; the advertisements did not state the term of the loan or otherwise state the period during which each simple annual rate of interest would apply.

80. Moreover, the APR disclosed—2.99%—was inaccurate. In fact, the APR for the loans promoted in those advertisements was at least 3.26%. The APR disclosed in the advertisements did not comply with the accuracy standards set forth in 12 C.F.R. § 1026.22(a)(2).

81. Numerous Prime Choice mortgage advertisements stated the amount of a payment, but failed to state the amount of each payment that would apply over the term of the loan (e.g., for adjustable-rate mortgages, payments

based on the application of the sum of a reasonably current index and margin); failed to state the period during which each payment would apply; failed to state the fact that the advertised payments did not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation would be greater; or failed to state these terms clearly and conspicuously.

82. As an example of the various deficiencies described in Paragraph 81, Prime Choice advertisements for a variable-rate mortgage sent to more than 16,000 consumers in November 2018 stated a payment amount that was based on a discounted, introductory rate of 3.75%, which applied for the first five years.

83. That payment was not calculated based on the index and margin that would be used to make subsequent payment adjustments over the remaining term of the loan, and the advertisements failed to state such a payment amount.

84. As of the date of the advertisements, November 8, 2018, a reasonably current index rate, based on the One-Year Constant Maturity Treasury rate, was at least 2.53%, and the margin was fixed at 1.75%, making the fully indexed rate at least 4.28%. Starting in year four, payments for the proposed loan, based on the fully indexed rate, would be at least $580, not including any applicable taxes and insurance premiums. No such payment amount was stated in the advertisements.

85. Moreover, the advertisements failed to state, clearly and conspicuously, the period during which each payment would apply.

86. In addition, the advertisements failed to state, clearly and conspicuously, that the payments did not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation would be greater.

87. In another example, Prime Choice advertisements sent to more than 30,000 consumers in March 2018 stated a payment amount of $121, which was for the advertised cash-out amount only and was based on a discounted, introductory rate of 2.625%, which only applied for the first three years.

88. These advertisements failed to disclose subsequent payments after the initial three years, failed to disclose the period in which each payment would apply, failed to state the full payment amount, and failed to state that the payment amounts did not include taxes and insurance premiums, if applicable, and that the actual payment obligation would be greater.

89. In addition, the advertisements failed to state, clearly and conspicuously, that the advertised payment did not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation would be greater.

90. Numerous Prime Choice mortgage advertisements used the name of the consumer's current lender without disclosing with equal prominence the

name of the person making the advertisement and without including a clear and conspicuous statement that the person making the advertisement was not associated with or acting on behalf of the consumer's current lender.

91. For example, Prime Choice advertisements sent to 358,000 consumers between April and July 2016 stated the name of the consumer's current lender at the top of the advertisements, while Prime Choice's name appeared only in small print on the back of the advertisements. The advertisements also failed to include a clear and conspicuous statement that the person making the advertisement was not associated with or acting on behalf of the consumer's current lender.

VIOLATIONS OF REGULATION Z

Unavailable Credit Terms, 12 C.F.R. § 1026.24(a)

92. Under 12 C.F.R. § 1026.24(a), "[i]f an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor."

93. Prime Choice violated § 1026.24(a) because, as described in Paragraphs 23–45, numerous Prime Choice advertisements for credit stated specific credit terms other than those terms that actually were or would be arranged or offered by the creditor.

Interest Rates Other than the APR, 12 C.F.R. § 1026.24(c)

94. Under 12 C.F.R. § 1026.24(c):

> If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact.… If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate [other than the APR], except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the [APR].

95. Prime Choice violated § 1026.24(c) because, as described in Paragraphs 70–71, numerous Prime Choice mortgage advertisements stated a simple annual interest rate more conspicuously than the APR.

Terms of Repayment, 12 C.F.R. § 1026.24(d)

96. Under 12 C.F.R. § 1026.24(d)(1), if an advertisement sets forth any of the four specified triggering terms (the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge), the advertisement must also state, among other things, "[t]he terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment." 12 C.F.R. § 1026.24(d)(1), (2)(ii).

97. Prime Choice violated § 1026.24(d) because, as described in Paragraphs 72–73, numerous Prime Choice mortgage advertisements set forth the period of repayment or the amount of any payment, which are triggering terms under § 1026.24(d)(1)(ii) and (iii), but failed to state the repayment obligations over the full term of the loan, pursuant to § 1026.24(d)(2)(ii).

Inadequate Disclosure of Rates, 12 C.F.R. § 1026.24(f)(2)(i)

98. Under 12 C.F.R. § 1026.24(f)(2)(i), if a direct-mail mortgage advertisement:

> states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:
>
> > (A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
> >
> > (B) The period of time during which each simple annual rate of interest will apply; and
> >
> > (C) The [APR] for the loan. If such rate is variable, the [APR] shall comply with the accuracy standards in §§ 1026.17(c) and 1026.22.

99. Prime Choice violated § 1026.24(f)(2)(i) because, as described in Paragraphs 74–80, numerous Prime Choice direct-mail mortgage advertisements for a loan for which more than one interest rate would apply stated a simple annual rate of interest, but did not include one or more of the disclosures

required pursuant to § 1026.24(f)(2)(i)(A) through (C), or did not disclose them clearly and conspicuously, as defined in § 1026.24(f)(2)(ii).

Inadequate Disclosure of Payment Terms, 12 C.F.R. § 1026.24(f)(3)(i)

100. Under 12 C.F.R. § 1026.24(f)(3)(i), a direct-mail mortgage advertisement that "states the amount of any payment" must disclose, in a clear and conspicuous manner:

> (A) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
>
> (B) The period of time during which each payment will apply; and
>
> (C) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

101. Prime Choice violated § 1026.24(f)(3)(i) because, as described in Paragraphs 81–89, numerous Prime Choice direct-mail mortgage advertisements stated the amount of a payment but did not include one or more of the disclosures required pursuant to § 1026.24(f)(3)(i)(A) through (C), or did not disclose them clearly and conspicuously, as defined in § 1026.24(f)(3)(ii).

Misleading Use of the Word "Fixed," 12 C.F.R. § 1026.24(i)(1)

102. Under 12 C.F.R. § 1026.24(i)(1), mortgage advertisements may not:

> Us[e] the word "fixed" to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:
>
> (i) In the case of an advertisement solely for one or more variable-rate transactions,
>
> > (A) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement; and
> >
> > (B) Each use of the word "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;
>
> (ii) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower payment), each use of the word "fixed" to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or
>
> (iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,
>
> > (A) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the

> advertisement with equal prominence as any use of the term "fixed," "Fixed-Rate Mortgage," or similar terms; and
>
> (B) Each use of the word "fixed" to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(ii) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

103. Prime Choice violated § 1026.24(i)(1) because, as described in Paragraphs 37–40, numerous Prime Choice mortgage advertisements for variable-rate transactions used the word "fixed" to refer to rates, payments, or the credit transaction and did not comply with the requirements of § 1026.24(i)(1)(i) through (iii).

Misleading Cost Comparisons, 12 C.F.R. § 1026.24(i)(2)

104. Under 12 C.F.R. § 1026.24(i)(2), mortgage advertisements may not:

> Mak[e] any comparison . . . between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:
>
> (i) In general. The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under § 1026.24(f)(2) and (3); and

> (ii) Application to variable-rate transactions. If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

105. Prime Choice violated § 1026.24(i)(2) because, as described in Paragraphs 51–54, numerous Prime Choice mortgage advertisements contained a comparison between actual or hypothetical payments or rates and a payment or simple annual rate that would be available under the advertised loan for a period less than the full term of the loan and did not comply with the requirements of § 1026.24(i)(2)(i) and (ii).

Misleading Use of the Current Lender's Name, 12 C.F.R. § 1026.24(i)(4)

106. Under 12 C.F.R. § 1026.24(i)(4), mortgage advertisements may not:

> Us[e] the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:
>
> > (i) Discloses with equal prominence the name of the person or creditor making the advertisement; and
> >
> > (ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

107. Prime Choice violated § 1026.24(i)(4) because, as described in Paragraphs 90–91, numerous Prime Choice mortgage advertisements, which were not sent by or on behalf of the consumer's current lender, used the name of the consumer's current lender and did not (1) disclose with equal prominence the name of the person or creditor making the advertisement, as required by § 1026.24(i)(4)(i); or (2) include a clear and conspicuous statement that the person making the advertisement was not associated with, or acting on behalf of, the consumer's current lender, as required by § 1026.24(i)(4)(ii).

VIOLATIONS OF THE MAP RULE (REGULATION N)

Misrepresentations About Rates, 12 C.F.R. § 1014.3(b)

108. Under 12 C.F.R. § 1014.3(b), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about "[t]he annual percentage rate, simple annual rate, periodic rate, or any other rate" applicable to a mortgage credit product. Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

109. Prime Choice violated § 1014.3(b) because, as described in Paragraphs 27–31 and 75–80, numerous Prime Choice mortgage advertisements contained misrepresentations about the APR applicable to a mortgage credit product.

Misrepresentations About Fees or Costs, 12 C.F.R. § 1014.3(c)

110. Under 12 C.F.R. § 1014.3(c), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about "[t]he existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged." Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

111. Prime Choice violated § 1014.3(c) because, as described in Paragraphs 41–43, numerous Prime Choice mortgage advertisements contained misrepresentations about the existence, nature, or amount of fees or costs to the consumer associated with a mortgage credit product.

Misrepresentations Using the Word "Fixed," 12 C.F.R. § 1014.3(g)

112. Under 12 C.F.R. § 1014.3(g), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about "[t]he variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word

'fixed.'" Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

113. Prime Choice violated § 1014.3(g) because, as described in Paragraphs 37–40, numerous Prime Choice mortgage advertisements contained misrepresentations about the variability of interest, payments, or other terms of a mortgage by using the word "fixed" to describe a variable-rate mortgage credit product.

Misleading Comparisons, 12 C.F.R. § 1014.3(h)

114. Under 12 C.F.R. § 1014.3(h), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, including:

> Any comparison between:
>
> > (1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and
> >
> > (2) Any actual or hypothetical rate or payment.

Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

115. Prime Choice violated § 1014.3(h) because, as described in Paragraphs 51–54, numerous Prime Choice mortgage advertisements contained a

misrepresentation about a mortgage credit product consisting of a misleading comparison between: (1) a rate or payment that would be available for a period less than the full length of the mortgage credit product; and (2) an actual or hypothetical rate or payment.

Misrepresentations About Cash Available, 12 C.F.R. § 1014.3(j)

116. Under 12 C.F.R. § 1014.3(j), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about "[t]he existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction." Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

117. Prime Choice violated § 1014.3(j) because, as described in Paragraphs 34–36, numerous Prime Choice mortgage advertisements contained misrepresentations about the existence, nature, or amount of cash available to the consumer in connection with the mortgage credit product, including misrepresentations that the consumer would receive a certain amount of cash as part of a mortgage credit transaction.

Misrepresentations About Payments, 12 C.F.R. § 1014.3(k)

118. Under 12 C.F.R. § 1014.3(k), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about "[t]he existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product." Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

119. Prime Choice violated § 1014.3(k) because, as described in Paragraphs 32–33, numerous Prime Choice mortgage advertisements contained misrepresentations about the payments that would be required in connection with the advertised mortgage credit product.

Misrepresentations About Government Affiliation, 12 C.F.R. § 1014.3(n)

120. Under 12 C.F.R. § 1014.3(n), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about:

> the association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

> (1) The provider is, or is affiliated with, any governmental entity or other organization; or
>
> (2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program.

Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

121. Prime Choice violated § 1014.3(n) because, as described in Paragraphs 57–59, numerous Prime Choice mortgage advertisements contained misrepresentations that the provider of the advertised mortgage credit product was affiliated with the government or that the product related to a federal tax benefit, or was endorsed by, sponsored by, or affiliated with the IRS, through the use of certain phrases as well as formats, symbols, or logos that resemble those of the IRS.

Misrepresentations About Consumer's Ability to Obtain Credit Terms, 12 C.F.R. § 1014.3(q)

122. Under 12 C.F.R. § 1014.3(q), it is a violation for any person subject to the MAP Rule to make any misrepresentation, directly or indirectly, expressly or by implication, in any commercial communication, about "[t]he consumer's ability or likelihood to obtain any mortgage credit product or

term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term." Under 12 C.F.R. § 1014.3, such a misrepresentation is specifically prohibited and is therefore material.

123. Prime Choice violated § 1014.3(q) because, as described in Paragraphs 48–50, numerous Prime Choice mortgage advertisements contained misrepresentations about the consumer's ability or likelihood to obtain the advertised mortgage credit product or term.

VIOLATIONS OF THE CFPA

124. Under the CFPA, it is unlawful for any covered person or service provider to engage in a deceptive act or practice in connection with any transaction with a consumer for a consumer-financial product or service, or the offering of a consumer-financial product or service. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

125. An act or practice is deceptive if it involves a material misrepresentation or omission that is likely to mislead consumers acting reasonably under the circumstances.

126. Information that is likely to affect a consumer's choice of, or conduct regarding, a product or service is material to consumers.

Deceptive Representations About Credit Terms

127. In numerous instances, as described in Paragraphs 23–47, Prime Choice's mortgage advertisements represented, expressly or by implication, that specific credit terms were available or would be arranged or offered by the creditor, including representations about specific APRs, payment amounts, the variable or fixed nature of rates or payments, closing costs, indexes, margins, or rate-increase caps stated in those advertisements, when in fact those specific credit terms were not available or were not terms that Prime Choice was actually prepared to arrange or offer.

128. Prime Choice's misrepresentations about the availability of the advertised credit terms of the advertised mortgage were likely to mislead consumers acting reasonably under the circumstances.

129. Prime Choice's misrepresentations about the credit terms of the advertised mortgage were material because they were likely to affect the conduct or decisions of consumers.

130. Therefore, Prime Choice engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Deceptive Representations About Consumers' Finances or Qualification

131. In numerous instances, as described in Paragraphs 48–56, Prime Choice's mortgage advertisements represented, expressly or by implication, that Prime Choice had specific information about the finances of the consumer who received the advertisement, whether the consumer was qualified to obtain the advertised loan terms, the consumer's likelihood of obtaining the advertised mortgage, and the benefit to the consumer of refinancing his or her mortgage.

132. In fact, Prime Choice did not have specific information about the finances of the consumer who received the advertisement, whether the consumer was qualified to obtain the advertised loan terms, the consumer's likelihood of obtaining the advertised mortgage, and the benefit to the consumer of refinancing his or her mortgage.

133. Prime Choice's representations that it had specific information about consumers' finances and qualifications for specific credit terms were likely to mislead consumers acting reasonably under the circumstances.

134. Prime Choice's representations that it had information about consumers' finances and qualifications for specific credit terms were material because they were likely to affect the conduct or decisions of consumers.

135. Therefore, Prime Choice engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Deceptive Representations About Government Affiliation

136. In numerous instances, as described in Paragraphs 57–61, Prime Choice's mortgage advertisements represented, expressly or by implication, that Prime Choice was affiliated with the government or that the advertised product related to a federal tax benefit, or was endorsed, sponsored by, or affiliated with the IRS.

137. In fact, Prime Choice was not affiliated with the government and the advertised product did not relate to a federal tax benefit and was not endorsed, sponsored by, or affiliated with the IRS.

138. Prime Choice's misrepresentations about government affiliation were likely to mislead consumers acting reasonably under the circumstances.

139. Prime Choice's misrepresentations about government affiliation were material because they were likely to affect the conduct or decisions of consumers.

140. Therefore, Prime Choice engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Deceptive Representations About a Property Assessment

141. In numerous instances, as described in Paragraphs 62–68, Prime Choice's mortgage advertisements represented, expressly or by implication, that the advertisement contained a property assessment, that the sender had conducted or obtained a property assessment, and that the loan terms stated in the advertisement were based on a property assessment.

142. In fact, the advertisement was not a property assessment, Prime Choice had not conducted a property assessment, and the loan terms offered in the advertisement were not based on a property assessment.

143. Prime Choice's misrepresentations about a property assessment were likely to mislead consumers acting reasonably under the circumstances.

144. Prime Choice's misrepresentations about a property assessment were material because they were likely to affect the conduct or decisions of consumers.

145. Therefore, Prime Choice engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Violations of the CFPA Based on Violations of Regulation Z and the MAP Rule

146. Under the CFPA, a covered person's violation of a Federal consumer financial law, which includes enumerated consumer laws and rules

thereunder, violates the CFPA. 12 U.S.C. §§ 5536(a)(1)(A), 5481(14).

147. Regulation Z and the MAP Rule are Federal consumer financial laws.

148. Prime Choice's violations of Regulation Z and the MAP Rule, described in Paragraphs 92–123, constitute violations of § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

CONDUCT PROVISIONS

VI.

Mortgage Advertising Prohibitions and Disclosure Requirements

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, that:

149. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate 12 C.F.R. § 1014.3 and 12 C.F.R. § 1026.24, and in connection with the advertising, marketing, promotion, or offering for sale of any mortgage credit product, are restrained from:

a. Misrepresenting, or assisting others in misrepresenting, expressly or by implication:

1. Any fact material to consumers regarding a mortgage credit product, including but not limited to the following: the total costs; any material restrictions, limitations, or conditions; or

any material aspect of its performance, efficacy, nature, or central characteristics;

2. The availability of an advertised or offered mortgage to any consumer; whether the consumer was pre-selected or pre-qualified for the advertised or offered mortgage; or the benefits of refinancing; or

3. That the advertisement is or contains a property assessment or appraisal.

b. Including or using any words, phrases, images, or design characteristics that falsely state or imply that:

1. The source of the advertisement is the government or the consumer's current lender or is affiliated with the government or the consumer's current lender; or

2. The advertisement is anything other than an advertisement for a mortgage;

c. Including or using any of the following words, phrases, images, or design characteristics:

1. "Benefit announcement"

2. "Eligibility advisory"

3. "Eligibility notice"

4. "Eligibility status"

5. "Expiration notice"

6. "Pending authorization"

7. "VA loan department"

8. "VA loan representative"

9. "VA loan specialist"

10. "VA program customer support"

11. "VA specialist"

12. "Waiting period"

13. The IRS signature year style (two digits in white or outlined text and the other two digits in black text);

14. The format of an IRS form, including Form W-2, or a substantially similar format; or

15. Any VA or United States Department of Defense (DOD) logo, or a logo, emblem, or other representation that resembles—or that a consumer could reasonably interpret as—a VA or DOD logo;

d. Representing that a consumer has been "prequalified" or "preselected" for any mortgage, unless (a) Respondent has, based on information about the creditworthiness of the individual consumer to whom the

advertisement was addressed and all other relevant factors (which may include, for example, the value of the potentially mortgaged property and the consumer's equity in that property), made a specific determination that the consumer is likely to qualify for the advertised mortgage under the precise terms stated in the advertisement; and (b) Respondent maintains documentation of such determination; and

e. Stating the name of the consumer's current or prior lender, unless the current or prior lender is Prime Choice, or unless stating the name of the current or prior lender is otherwise required by law.

150. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, or offering for sale of any mortgage credit product, must take the following affirmative actions:

a. Respondent must have prior substantiation for all express and implied claims made in Respondent's mortgage advertisements.

b. In any direct-mail mortgage advertisement that states a cash-out amount for a cash-out refinance mortgage and a monthly payment amount only for the portion of that mortgage used to obtain that cash-out amount, Respondent must disclose Clearly and Prominently: (1)

that obtaining the stated cash-out amount requires the consumer to refinance the entire amount of the consumer's existing mortgage with a new loan purchased from Respondent, and (2) the total monthly payment amount(s) for such a refinanced mortgage.

c. If Respondent screens or selects consumers to receive any direct-mail mortgage advertisements based on consumers' credit scores or credit tiers, those advertisements may only contain specific credit terms that are available to consumers with a credit score equal to or less than the credit score or credit tier that was used to identify the recipient consumers.

d. In any direct-mail mortgage advertisement, if the advertisement states an interest rate or APR that is available only to consumers whose credit scores are above a threshold number, that fact (including the applicable credit score threshold) must be disclosed Clearly and Prominently on the same side of the advertisement as the advertised interest rate or APR.

e. If a mortgage advertisement includes the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, the advertisement must also include, at a minimum:

1. The amount or percentage of the downpayment;
2. The term of the loan in either months, years, or number of monthly payments;
3. The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
4. The period during which each payment will apply;
5. The fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater;
6. The loan amount upon which the disclosures are based; and
7. The "annual percentage rate," using that term, and, if the rate may be increased after consummation, that fact.

f. In any direct-mail advertisement for an adjustable rate mortgage, Respondent must:

1. State, Clearly and Prominently, that the product is an "adjustable rate mortgage," using those words. The

advertisement may not use the term "hybrid" before the first use of the phrase "adjustable rate mortgage";

2. For each simple annual rate of interest disclosed that is based on an index and margin, base the rate on an index value in effect on the date of the advertisement or within 60 days prior, and disclose the index and margin; and

3. State that more information about adjustable rate mortgages is available at https://files.consumerfinance.gov/f/201401_cfpb_booklet_charm.pdf.

g. Any disclosure in a direct-mail mortgage advertisement that must be made with "equal prominence and in close proximity" under Regulation Z, 12 C.F.R. § 1026.24, must be:

1. In the same type size as the advertised rates or payments triggering the required disclosures;

2. Located immediately next to or directly above or below the advertised rates or payments triggering the required disclosures, without any intervening text or graphical displays; and

3. Otherwise compliant with Regulation Z, as applicable.

VII.

Advertising Review

IT IS FURTHER ORDERED that:

151. Respondent, whether acting directly or indirectly, must take the following affirmative actions:

a. Respondent's Advertising Compliance Official must review each mortgage advertisement template before any advertisement based on that template is disseminated to a consumer to ensure that it is compliant with TILA, Regulation Z, the MAP Rule, the CFPA, and this Consent Order. This review must encompass any envelope or mailer and all enclosures. This review includes reviewing all claims made in the advertisement, expressly or by implication, to ensure that they are accurate and substantiated.

b. Before any set of direct-mail advertisements based on a template is mailed to consumers, the Advertising Compliance Official must review an Exemplar of those advertisements—including any envelope, mailer, and enclosures—to ensure that it is compliant with TILA, Regulation Z, the MAP Rule, the CFPA, and this Consent Order. This includes reviewing all claims made in the advertisement, expressly or by implication, to ensure that they are accurate and

substantiated. All specific credit terms stated in the Exemplar must be available and based on a reasonably current index rate, if applicable, at the time the advertisement is disseminated. This requirement applies whether the set is mailed as a single batch or in multiple batches. It also applies whether the set is mailed out at a single time or over a period.

c. The Advertising Compliance Official must document in writing his or her review of each advertisement template or Exemplar. That documentation must include a copy of the advertisement, the date of the review, and documents sufficient to substantiate all claims made in the advertisement, expressly or by implication. If the advertisement includes specific rates, that documentation must also include a rate sheet showing the availability of the advertised rate(s). If the advertisement states an APR, that documentation must include a copy of a worksheet showing the calculation of the APR, including all inputs assumed when calculating that number. If the advertisement states an amount of cash that a borrower might receive, the documentation must state the method of arriving at that number and include any materials used to determine the availability of that amount.

d. The Advertising Compliance Official and any employees with responsibilities related to designing, developing, or approving the content of Respondent's mortgage advertisements must participate in annual training on TILA, Regulation Z, the MAP Rule, and the CFPA, as those laws apply to mortgage advertising.

VIII.

Compliance Plan

IT IS FURTHER ORDERED that:

152. Within 45 days of the Effective Date, Respondent must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's mortgage advertising complies with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:

a. Detailed steps for addressing each action required by this Consent Order; and

b. Specific timeframes and deadlines for implementation of the steps described above.

153. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Respondent to revise it. If

the Enforcement Director directs Respondent to revise the Compliance Plan, Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 15 days.

154. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

MONETARY PROVISIONS

IX.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

155. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section V of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of $645,000 to the Bureau.

156. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

157. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

158. Respondent, for all purposes, must treat the civil money penalty paid under this Consent Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Respondent may not:

a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or

b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.

159. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money

penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

X.

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

160. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

161. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.

162. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be

used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

163. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

COMPLIANCE PROVISIONS

XI.

Reporting Requirements

IT IS FURTHER ORDERED that:

164. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days

before the development, but in any case no later than 14 days after the development.

165. Within 7 days of the Effective Date, Respondent must:

a. Designate at least one telephone number and email, physical, and postal addresses as points of contact, that the Bureau may use to communicate with Respondent;

b. Identify any businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and

c. Describe the activities of any such business, including the products and services offered, and the means of advertising, marketing, and sales.

166. Respondent must report any change in the information required to be submitted under Paragraph 165 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

167. Within 90 days of the Effective Date, and again one year after receiving notice of non-objection to the Compliance Plan, Respondent must submit to the Enforcement Director an accurate written compliance progress report

(Compliance Report) that has been approved by Respondent's executive officers, sworn to under penalty of perjury, which, at a minimum:

a. Lists each applicable paragraph and subparagraph of the Consent Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;

b. Describes in detail the manner and form in which Respondent has complied with the Compliance Plan;

c. Describes in detail any instances in which Respondent has not complied with the Consent Order or Compliance Plan, with an explanation of why any such instances occurred; and

d. Attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

XII.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

168. Within 7 days of the Effective Date, Respondent must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.

169. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members (if any) and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

170. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section XI, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

171. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

172. Within 90 days of the Effective Date, Respondent must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 169–70 and a copy of all

signed and dated statements acknowledging receipt of this Consent Order under Paragraph 171.

XIII.

Recordkeeping

IT IS FURTHER ORDERED that:

173. Respondent must comply with the recordkeeping requirements of 12 C.F.R. § 1014.5, including but not limited to keeping, for a period of twenty-four months from the last date Respondent made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with the MAP Rule:

a. Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that Respondent made or disseminated during the relevant time period;

b. Documents describing or evidencing all mortgage credit products available to consumers during the time period in which Respondent made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

c. Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which Respondent made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

174. Respondent must retain its mailing lists for direct-mail mortgage advertisements disseminated within 5 years of the Effective Date for at least 5 years after dissemination of the advertisement.

175. Respondent must retain the documentation required by Paragraph 151(c) for at least 5 years after dissemination of the advertisement.

176. Respondent must create or, if already created, must retain the following business records:

a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau;

b. Copies of all advertisements, websites, and other marketing materials, including any such materials used by a third party on Respondent's

behalf; and

c. All consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.

177. Respondent must retain the documents identified in Paragraph 176 for at least 5 years after creation of the record.

178. Respondent must make the documents identified in Paragraphs 173–77 available to the Bureau upon the Bureau's request.

XIV.

Notices

IT IS FURTHER ORDERED that:

179. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re Prime Choice Funding, Inc.*, File No. 2020-BCFP- 0006 ," and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XV.

Compliance Monitoring

IT IS FURTHER ORDERED that:

180. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondents' compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Respondents' compliance with those requirements.

181. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.

182. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondent's compliance with those requirements any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

183. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XVI.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

184. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

185. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XVII.

Administrative Provisions

IT IS FURTHER ORDERED that:

186. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as described in Paragraph 187. Further, for the avoidance of doubt, the

provisions of this Consent Order do not bar, estop, or otherwise prevent any other person or governmental agency from taking any action against Respondent.

187. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section V of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

188. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

189. The requirements under Paragraphs 174–75 and 177–78 of this Consent Order will terminate when the specified recordkeeping periods have expired.

All other requirements under this Consent Order will terminate 5 years from the Effective Date. The Consent Order will remain effective and enforceable until such times, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

190. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

191. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

192. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

193. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises,

representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

194. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its officers, or its employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 22nd day of July, 2020.

Kathleen L. Kraninger
Director
Bureau of Consumer Financial Protection