

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

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In the Matter of

MORTGAGE RESEARCH CENTER, LLC, D/B/A  
VETERANS UNITED HOME LOANS,

Respondent.

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**CONSENT ORDER**

**WHEREAS**, the Superintendent of Financial Services of the State of New York (the “Superintendent”) designated examiners from the New York State Department of Financial Services (the “Department” or “DFS”) to conduct an examination (the “Examination”) of Mortgage Research Center, LLC d/b/a VAMortgage Center and/or Veterans United Home Loans (“Veterans United”) covering the period from January 1, 2011 to June 30, 2014 (the “Exam Period”); and

**WHEREAS**, the Department examined whether Veterans United was in compliance with New York State and federal laws and regulations; and

**WHEREAS**, the Examination revealed that, during the Exam Period, in at least 322 cases within the State of New York, where borrowers obtained from Veterans United a credit to cover estimated closing costs by agreeing to a higher interest rate (a “lender credit”) and where the final closing costs were lower than such estimated costs (resulting in a “surplus lender credit”), Veterans United did not adjust down the interest rate, reduce the principal balance of the loan, reduce the down-payment (if applicable), provide a cash refund, or pursue any other means of refunding the surplus to the borrower; and

**WHEREAS**, at all times during the Exam Period, when a surplus lender credit resulted,

Veterans United was required to apply the surplus to reduce the loan's principal balance, reduce the loan's interest rate, or provide a cash refund to the borrower; and

**WHEREAS**, the Examination revealed that Veterans United failed to preserve rate sheets applicable to loans it made during the Exam Period for which lender credits were purchased;

**NOW, THEREFORE**, the Department and Veterans United are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

### **FINDINGS**

The relevant findings of the Department's Examination concerning Veterans United's retention of surplus lender credit are as follows:

#### **Entity**

1. Veterans United is a Missouri limited liability company with its principal place of business at 1400 Veterans United Drive, Columbia, Missouri 65203. The Superintendent granted Veterans United a New York mortgage banker license on April 13, 2007.

2. Veterans United specializes in the origination of mortgage loans guaranteed by the United States Department of Veterans Affairs. A majority of Veterans United's borrowers are veterans of the United States armed forces and/or their families. Following origination, Veterans United typically sells the mortgage loans it originates to secondary market investors.

#### **Terms**

3. A "lender credit" is a credit toward estimated closing costs of a mortgage loan purchased by a borrower via his or her agreement to a higher interest rate on the mortgage loan.

4. A "surplus lender credit" results when the actual closing costs of a loan are below the estimated closing costs for which the borrower purchased lender credit.

5. A "rate sheet" is a document provided by a lender to loan officers which, among other

things, sets forth the amount of lender credit to which a lender has agreed based upon the borrower's agreement to an increased interest rate.

#### **Veterans United's Failure to Refund Surplus Lender Credits**

6. In at least 322 loans closed within the State of New York during the Exam Period, where a surplus lender credit occurred, Veterans United did not adjust down the interest rate, reduce the principal balance of the loan, reduce the down-payment (if applicable), provide a cash refund, or pursue any other means of refunding the surplus to the borrower.

7. The total surplus lender credit retained by Veterans United for the 322 loans described herein was \$360,286.39.

8. Veterans United ceased its retention of surplus lender credits for new loans it originated in New York following June 2014 at its own initiative after obtaining agreement from investors to principal reductions. After June 2014, when a surplus lender credit arose on a loan originated by Veterans United in New York, Veterans United has in all cases reduced the principal balance of the loan in the amount of the surplus lender credit, or otherwise returned the surplus lender credit to the borrower according to one of the other means prescribed by the HUD Guidance (as defined herein).

#### **Veterans United's Failure to Preserve Applicable Rate Sheets**

9. During the Examination, the Department determined that Veterans United had failed to preserve the applicable rate sheets in the files of loans for which borrowers had purchased lender credit. (Prior to the Examination, in the fall of 2012, Veterans United implemented processes to produce and maintain applicable rate sheets.) The Department and Veterans United believe that Veterans United retained surplus lender credit in the origination of other loans made in New York not included in the 322 loans cited herein that could not be identified due to Veterans United's

failure to preserve the applicable rate sheets.

### **Relevant Statutes and Regulations**

10. Guidance issued by the Department of Housing and Urban Development on January 28, 2010 (the “HUD Guidance”), relating to Regulation X of the Real Estate Settlement and Procedures Act (12 CFR § 1024.7(e)), states: “On a no-cost loan that covers third-party costs where the rate has been locked” and where the “actual third party fees at closing are lower than stated on the GFE,” the “amount of the [lender] credit may not be reduced. The loan originator may choose to: 1) have the amount of the credit remain the same as stated on the GFE to cover additional closing costs previously not anticipated to be included in the ‘no-cost’ loan; 2) apply a principal reduction to the principal balance; 3) reduce the interest rate and the credit accordingly; or 4) have the credit remain the same, resulting in cash to the borrower.”

11. Section 590(5)(c) of the New York Banking Law states that “[m]ortgage bankers and exempt organizations shall make mortgage loans in conformity with the provisions of this chapter, such rules and regulations as may be promulgated by the superintendent thereunder and all applicable federal laws and the rules and regulations promulgated thereunder.”

12. Part 38.7(a)(1) of the General Regulations of the Superintendent states that “[n]o ... mortgage banker ... shall: misrepresent or conceal material loan terms, or make false promises to induce an applicant to apply for a mortgage loan.”

13. Part 410.7(f) and (g) of the Superintendent’s Regulations requires retention of “all documents relating to credit, pricing and underwriting decisions” for every loan application, as well as the “regular rate sheet[s] utilized by the lender.”

### **Violations**

14. The Department finds that Veterans United’s failure to return surplus lender credit to

New York borrowers by any of the means described in the HUD Guidance violated Regulation X, and therefore violated Section 590(5)(c) of the New York Banking Law.

15. The Department finds that Veterans United's practice of selling lender credits to borrowers, yet (1) not disclosing the credit purchased on the Good Faith Estimate, (2) not disclosing to the borrowers that Veterans United would keep the balance of the credit when the closing costs were below the amount of the credit, and/or (3) not disclosing the amount of surplus lender credit, comprises a violation of Part 38.7(a)(1) of the General Regulations of the Superintendent.

16. The Department finds that Veterans United's failure to retain the rate sheets applicable to loans in which lender credits were purchased comprises a violation of Part 410.7(f) and (g) of the Superintendent's Regulations.

### **AGREEMENT**

IT IS HEREBY UNDERSTOOD that Veterans United and all of its subsidiaries, affiliates, successors, assigns, agents, representatives, and employees, agree to the following relief and provisions:

### **Cease and Desist**

17. Veterans United shall cease and desist the practices found by the Department to have violated applicable statutes and regulations. When a surplus lender credit results in any future loan made by Veterans United to any New York borrower, Veterans United will apply the amount of the surplus to a reduction of the principal balance of the loan or provide a cash refund to the borrower at the closing of the loan.

### **Retention of Rate Sheets**

18. Veterans United shall retain a copy of the applicable rate sheet for each individual loan made to New York borrower(s) in such a manner that the rate sheet applicable to any particular loan can be readily identified.

### **Restitution**

19. Within 60 days of execution of this Consent Order (the “Effective Date”, as described herein), Veterans United shall:

- a. Identify all borrowers for whom surplus lender credit was not returned by any of the means set forth in the HUD Guidance, from as early as its records will allow until the Effective Date; and
- b. Calculate and deposit in the facilities of the United States Postal Service, for delivery by prepaid first-class mail to each beneficiary to whom Veteran United owes payment in excess of one dollar, a check in the full amount of such surplus lender credit, together with interest on such surplus lender credit at a rate of 9% per annum, beginning on the closing date of the subject loan and ending on the Effective Date. All checks must be valid for six months. Such payment shall be accompanied by a letter in a form approved by the Department.

20. Within 60 days of the Effective Date, Veterans United shall:

- a. Identify all New York borrowers who obtained loans from Veterans United between January 28, 2010<sup>1</sup> through June 30, 2014, and for which loans Veterans United is unable to determine whether surplus lender credit was retained due to missing information, and

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<sup>1</sup> The effective date of the HUD Guidance.

- b. Calculate and deposit in the facilities of the United States Postal Service, for delivery by prepaid first-class mail to each beneficiary to whom Veteran United owes payment in excess of one dollar, a check in the amount of two hundred ninety dollars and seventy nine cents (\$290.79). All checks must be valid for six months. Such payment shall be accompanied by a letter in a form approved by the Department.

21. For any payment to a beneficiary that is returned to Veterans United as undeliverable or not deposited within six months, Veterans United shall conduct a reasonable search for a current address, including via skiptracing if necessary. Veterans United may cancel checks not deposited within six months. Should the search show a more current address, Veterans United shall re-issue a check valid for six months in the amount of the returned or un-deposited check and send the reissued check to the more current address within fifteen days in the manner provided in paragraphs 19 and 20. After doing so, no further action shall be required by Veterans United to complete the mailing process.

22. In the event that a beneficiary does not cash his or her check before the expiration date of the check or the check was returned after Veterans United re-posts the check as described in Paragraph 21, Veterans United shall follow all applicable provisions of the New York Abandoned Property Law, including all reporting, mailing, and remittance requirements.

### **Reporting**

23. Veterans United shall report in writing to the Department its actions to comply with paragraphs 19-20 within 120 days following the Effective Date. The report shall include a schedule of all restitution paid by Veterans United and shall specify borrower name, date of origination, amount of surplus lender credit retained by Veterans United, amount of interest calculated by Veterans United where applicable, total amount of restitution payment, date restitution payment was sent, and date restitution payment was cashed or deposited by the borrower. In addition, every six months thereafter, for a period of two years following the Effective Date, Veterans United shall report in writing to the Department all instances during the preceding six months in which a surplus lender credit resulted in a loan originated by Veterans United to a New York borrower, and the manner and date in which such surplus lender credit was returned to each such borrower.

### **Monetary Penalty**

24. Veterans United shall pay a civil penalty of five hundred thousand dollars (\$500,000) to the Department within ten days of the Effective Date. The payment shall be in the form of wire transfer in accordance with instructions provided by the Department.

### **Other Relief**

25. Veterans United submits to the authority of the Superintendent to effectuate this Consent Order.

26. Veterans United will cease and desist from retaining surplus lender credit in any loans made to New York borrowers. If a surplus lender credit arises, Veterans United shall adjust down the interest rate, reduce the principal balance of the loan, reduce the down-payment (if applicable), or provide a cash refund to the borrower in the amount of the surplus lender credit.

27. Veterans United represents and warrants, through its signature below, that the terms and conditions of this Consent Order are duly approved, and execution of this Consent Order is duly authorized.

#### **Breach of the Consent Order**

28. In the event that the Department believes Veterans United to be materially in breach of the Consent Order (“Breach”), the Department will provide written notice to Veterans United of the Breach and Veterans United must, within ten business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and shall have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.

29. The Department and Veterans United understand and agree that Veterans United’s failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Veterans United’s Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

#### **Other Provisions**

30. If Veterans United defaults on any of its obligations under this Consent Order, the Department may terminate this Consent Order, at its sole discretion, upon ten days’ written notice to Veterans United. In the event of such termination, Veterans United expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude the Department

from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against them, or from using in any way statements, documents, or other materials produced or provided by Veterans United prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.

31. The Department has agreed to the terms of this Consent Order based on, among other things, the representations made to the Department by Veterans United and the Department's own factual Examination. To the extent that representations made by Veterans United is later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.

32. Upon the request of the Department, Veterans United shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.

33. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

Attention:

Michael Weiss  
Director of Fair Lending and Consumer Compliance  
New York State Department of Financial Services  
One State Street,  
New York, New York 10004

and

Nancy Ruskin  
Deputy Director  
Financial Frauds and Consumer Protection  
New York State Department of Financial Services  
One State Street,  
New York, New York 10004

Email: FFCPD\_Enforcement@dfs.ny.gov

34. All notices, reports, requests, certifications, and other communications to Veterans United regarding this Consent Order shall be in writing and shall be directed as follows:

Attention:

Mortgage Research Center, LLC d/b/a Veterans United Home Loans  
1400 Veterans United Drive  
Columbia, MO 65203

Email: bcooper@veteransunited.com

35. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

36. Veterans United waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agree that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.

37. This Consent Order may not be amended except by an instrument in writing signed on behalf of all the parties to this Consent Order.

38. This Consent Order constitutes the entire agreement between the Department and Veterans United relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

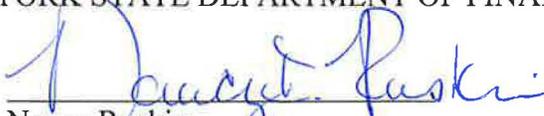
39. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Consent Order.

40. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Veterans United for the conduct set forth in the Consent Order provided that Veterans United complies fully with the terms of the Consent Order.

41. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services or her designee ("Effective Date").

WHEREFORE, the signatures evidencing assent to this Consent Order have been affixed hereto on the dates set forth below.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By:   
Nancy Ruskin  
Deputy Director  
Financial Frauds & Consumer Protection

August 9, 2017

MORTGAGE RESEARCH CENTER, LLC

By:   
Brant Bukowsky  
Owner

August 4, 2017

THE FORGOING IS HEREBY APPROVED.  
IT IS SO ORDERED.

Dated: New York, New York  
August 10, 2017

  
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MARIA T. VULLO  
Superintendent of Financial Services