



NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004

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In the Matter of :  
CFCU COMMUNITY CREDIT UNION :  
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**CONSENT ORDER**

The New York State Department of Financial Services (the “Department”) and CFCU Community Credit Union (“CFCU” or the “Credit Union”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, CFCU is a New York State-chartered, member-owned, nonprofit credit union based in Ithaca, New York, that, as of December 31, 2021, has 11 branches and over \$1 billion in assets;

WHEREAS, the Department conducted a consumer compliance and fair lending examination of CFCU covering the period from January 1, 2016, to September 30, 2019 (“the Examination”), and found deficiencies in the Credit Union’s compliance with federal and state laws;

WHEREAS, following the Examination, the Department began an enforcement investigation into the compliance failures identified by the Examination, as well as whether CFCU's compliance program adequately complies with applicable federal and New York State laws and regulations related to fair lending (the "Enforcement Investigation"); and

WHEREAS, the Enforcement Investigation determined that CFCU unlawfully (1) permitted the interest rates on 12 preexisting loans issued to servicemembers who had transitioned into active service to exceed six percent and (2) permitted the vehicles of two active servicemembers to be repossessed absent a court order.

NOW THEREFORE, to resolve this matter without further proceedings, pursuant to the Superintendent's authority under Section 408 of the Financial Services Law, the Department finds as follows:

### **THE DEPARTMENT'S FINDINGS**

#### **Introduction**

1. The Department is the primary banking regulator in the State of New York, and it licenses and oversees various financial services businesses, including state-chartered credit unions such as CFCU.

2. The Superintendent of the Department of Financial Services (the "Superintendent") is responsible for ensuring the safety, soundness, and prudent conduct of the providers of financial services in New York State and for enforcing various laws and regulations that are applicable to financial services licensees, including the federal Servicemembers Civil Relief Act, New York Military Law, New York Financial Services Law, and various regulations that have been promulgated under those statutes.

3. The Superintendent has the authority to conduct investigations and to bring enforcement proceedings, levy monetary penalties, and order injunctive relief against parties who have violated relevant laws and regulations.

4. CFCU is one of the largest credit unions in New York State, with 11 locations, more than 70,000 members, and over \$1 billion in assets. Borrowers who are on active duty military service account for less than one percent of CFCU's total loans.

5. A range of federal and state laws provide military servicemembers with certain protections to enable them to fully devote themselves to the nation's defense. Such laws include the federal Servicemembers' Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901–4043, and the New York State Soldiers' and Sailors' Civil Relief Act of 1951 ("NY MIL"), NY CLS MIL §§ 300–328.

6. Under SCRA and NY MIL, a servicemember's financial obligations during a period of active duty may not bear an interest rate in excess of six percent, provided that the servicemember entered into the contract prior to a period of active duty service. For purposes of this statutory cap, interest includes all fees associated with the financial obligation, 50 U.S.C. § 3937(a)(1); NY CLS MIL § 323-a, and, accordingly, a financial obligation carrying an interest rate of six percent and additional fees would exceed the six-percent interest-rate cap. To receive the benefit of this interest-rate cap under SCRA, a servicemember must submit to the lender a written notice and documentation of active duty service, such as a copy of military orders or letter from a commanding officer. 50 U.S.C. § 3937(b)(1).

7. SCRA and NY MIL also include protections against vehicle repossession. Under these provisions, a contract by a servicemember for the purchase of real or personal property, including a motor vehicle, entered into before the date of the servicemember's active military

duty may not be rescinded or terminated for breach of said contract before or during the term of the servicemember's active duty, nor may the property be repossessed without a court order. 50 U.S.C. § 3952(a)(1)(A); NY CLS MIL § 311.1. Unlike the interest-rate cap discussed above, this protection is automatic and does not require the servicemember to notify a counterparty. Rather, it is incumbent upon the counterparty to search publicly available databases, such as the Department of Defense Manpower Data Center located on the Servicemembers Civil Relief Act Website,<sup>1</sup> to verify that the property to be foreclosed upon or repossessed is not eligible for the protections of SCRA or NY MIL.

8. As described below, the Examination found that certain of CFCU's operating procedures related to the assessment of late fees and asset recovery process deprived servicemembers of their SCRA and/or NY MIL protections. The Department enters into this Consent Order to resolve CFCU's noncompliance with these laws.

#### Events at Issue

##### *Interest Rate Overcharges*

9. Between January 1, 2016, and July 27, 2021, CFCU exceeded the statutorily defined six-percent interest rate cap on 12 of its active duty servicemember loans by a total of \$2,628.63.

10. As a result of the Examination's findings, and before the Examination was finalized, CFCU refunded to these servicemembers the overcharges in the form of credit to the outstanding loan balance, charge-off value, or cash payment, depending on whether the loan in question was open, written off, or closed.

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<sup>1</sup> Servicemembers Civil Relief Act (SCRA) Website, <https://scra.dmdc.osd.mil/>.

### *Vehicle Repossessions*

11. In addition to the above-described interest-rate violations, three servicemembers who were CFCU customers were called to active duty after opening auto loans with CFCU — at least one of whom provided notice to CFCU that he had been called to active duty — and subsequently fell behind on their payments. CFCU later threatened these servicemembers with repossession of their vehicles. Although one of these servicemembers became current on his loan after repeated communications threatening repossession, two others did not, and their vehicles were repossessed.

12. Further, after wrongfully repossessing the two vehicles, CFCU reported the repossessions to credit reporting agencies. Consequently, the two affected servicemembers suffered monetary losses for years thereafter due to reduced credit capacity and the increased borrowing costs related to their damaged credit history.

### Violations of Law and Regulations

13. CFCU charged active duty servicemembers an interest rate in excess of six percent, in violation of NY CLS MIL § 323-a and 50 U.S.C. § 3937.

14. CFCU repossessed the property of active duty servicemembers without a judicial order, in violation of NY CLS MIL § 311 and 50 U.S.C. § 3952.

NOW THEREFORE, to resolve this matter without further proceedings, the Department and the Credit Union stipulate and agree to the following terms and conditions:

### **SETTLEMENT PROVISIONS**

#### Monetary Penalty

15. No later than ten (10) days after the Effective Date (as defined below) of this Consent Order, the Credit Union shall pay a total civil monetary penalty pursuant to Financial

Services Law § 408 to the Department in the amount of \$200,000.00 (two hundred thousand U.S. dollars).

16. The Credit Union shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

17. The Credit Union shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including, but not limited to, payment made pursuant to any insurance policy.

18. In assessing a penalty for failures to comply with Financial Services Law § 408, the Department has taken into account factors that include, without limitation: the extent to which the entity has cooperated with the Department in the investigation of such conduct, the gravity of the violations, and such other matters as justice and the public interest may require.

19. The Department acknowledges CFCU's commendable cooperation throughout this investigation. The Department also recognizes and credits CFCU's ongoing efforts to remediate the shortcomings identified in this Consent Order.

#### Remediation and Further Restitution

20. In addition to the penalty paid to the Department, CFCU agrees to provide further restitution to the two servicemembers who suffered improper vehicle repossession as follows: CFCU shall make a direct payment to each servicemember whose vehicle was repossessed in the sum of (a) \$10,000.00 (ten thousand U.S. dollars) and (b) the greater of (i) the fair market value of the vehicle at the time of repossession or (ii) the sum of all payments made by the borrower on

the loan, including all fees paid by the borrower.<sup>2</sup> CFCU also agrees to contact all relevant credit reporting agencies on behalf of the affected servicemembers described in Paragraph 12 to remove the tradelines associated with the repossessions.

21. Further, CFCU agrees to enhance policies and adopt additional procedures to ensure compliance with SCRA and NY MIL. These policies and procedures shall, among other things, require searches for the duty status of borrowers involving all accounts subject to repossession prior to commencing such action and enhancement of the corresponding documentation and tracking requirements for quality assurance.

22. CFCU agrees to provide all appropriate personnel, including the Credit Union's asset recovery unit, with annual training on SCRA and NY MIL compliance.

Full and Complete Cooperation

23. The Credit Union commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Further Action by the Department

24. No further action will be taken by the Department against the Credit Union or its successors for the conduct set forth in this Consent Order, or in connection with the remediation set forth in this Consent Order, provided that the Credit Union fully complies with the terms of the Consent Order.

25. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against the Company for transactions or conduct

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<sup>2</sup> CFCU is required to make a minimum of three attempts within 30 days of the execution of this Consent Order to locate and provide payments to the affected servicemembers.

that were not disclosed in the written materials submitted to the Department in connection with this matter.

Waiver of Rights

26. The Credit Union submits to the authority of the Superintendent to effectuate this Consent Order.

27. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal, or agency outside of the Department.

Parties Bound by the Consent Order

28. This Consent Order is binding on the Department and the Credit Union, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

Breach of Consent Order

29. In the event that the Department believes the Credit Union to be in material breach of the Consent Order, the Department will provide written notice to the Credit Union, and the Credit Union must, within ten (10) days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

30. The Credit Union understands and agrees that its failure to make the required showing within the designated time period shall be presumptive evidence of the Credit Union's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under the New York Financial Services Law and any other applicable



laws and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Notices

31. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

David Casler  
Senior Assistant Deputy Superintendent  
One State Street  
New York, New York 10004

For CFCU:

Eliza Mulhern  
Chief Risk Officer and General Counsel  
CFCU Community Credit Union  
1030-1050 Craft Road  
Ithaca, NY 14850

Miscellaneous

32. 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.

33. This Consent Order may not be altered, modified, or changed unless in writing and signed by the parties hereto.

34. This Consent Order constitutes the entire agreement between the Department and the Credit Union and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

35. Each provision of this Consent Order shall remain effective and enforceable against the Credit Union, its successors, and assigns, until stayed, modified, suspended, or terminated by the Department.

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

37. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.

38. Nothing in this Consent Order shall be construed to prevent any consumer or any other third party from pursuing any right or remedy at law.

39. 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 (the “Effective Date”).

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES**

**CFCU CREDIT UNION**

By: /s/ Elizabeth A. Farid  
ELIZABETH A. FARID  
Senior Assistant Deputy Superintendent  
for Consumer Protection and Financial  
Enforcement

April 10, 2023

By: /s/ Eliza S. Mulhern  
ELIZABETH MULHERN  
Chief Risk Officer and General Counsel  
CFCU Community Credit Union

April 3, 2023

By: /s/ Alison L. Passer  
ALISON L. PASSER  
Deputy Director of Enforcement Consumer  
Protection and Financial Enforcement

April 10, 2023

By: /s/ Kevin R. Puvalowski  
KEVIN R. PUVALOWSKI  
Acting Executive Deputy Superintendent for  
Consumer Protection and Financial  
Enforcement

April 11, 2023

**FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.**

/s/ Adrienne A. Harris  
ADRIENNE A. HARRIS  
Superintendent of Financial Services

April 13, 2023