

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

CONSUMER FINANCIAL PROTECTION
BUREAU, and UNITED STATES OF
AMERICA,

Plaintiffs,

v.

FAIRWAY INDEPENDENT MORTGAGE
CORPORATION,

Defendant.

Civil Action No.

[PROPOSED] CONSENT ORDER

INTRODUCTION

The Consumer Financial Protection Bureau (Bureau) and United States of America (United States) (together, Plaintiffs) commenced this civil action to obtain injunctive and monetary relief and civil penalties from Fairway Independent Mortgage Corporation (Defendant or Fairway). The Complaint alleges violations of the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619, the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f, and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5536(a)(1)(A), in connection with Fairway's mortgage lending in the Birmingham-Hoover, Alabama, Metropolitan Statistical Area. Plaintiffs allege that Fairway unlawfully discriminated by redlining majority-Black areas in the Birmingham-Hoover, AL Metropolitan Statistical Area in its residential mortgage lending.

The Bureau, the United States, and Defendant agree to entry of this Consent Order (Order), without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Fairway neither admits nor denies the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Fairway admits the facts necessary to establish this Court's personal jurisdiction over Fairway and the subject matter jurisdiction related to the Lawsuit Subject Matter.
3. Fairway waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.
4. Entry of this Order is in the public interest.

DEFINITIONS

5. The following definitions apply to this Order:
 - a. "**Birmingham MSA**" means the Birmingham-Hoover, Alabama, Metropolitan Statistical Area, which for purposes of this Order encompasses Bibb, Blount, Chilton, Jefferson, Shelby, and St. Clair Counties.
 - b. "**Board**" means Fairway's duly elected and acting Board of Directors.
 - c. "**Bureau**" means the Consumer Financial Protection Bureau.
 - d. "**Covered Staff and Official**" means:

- i. all Fairway employees with substantive involvement in Fairway’s activities related to the Lawsuit Subject Matter;
 - ii. senior management with oversight over marketing and compliance with the FHA and ECOA; and
 - iii. members of the Board.
- e. “**Defendant or Fairway**” means Fairway Independent Mortgage Corporation, including its trade name MortgageBanc and any other names by which it might be known, and its successors and assigns.
- f. “**Effective Date**” means the date on which the Order is entered by the Court.
- g. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement for the Bureau, or their delegate.
- h. “**Lawsuit Subject Matter**” means the allegation that Fairway violated the FHA, ECOA, and/or the CFPA in connection with Fairway's residential mortgage lending in the Birmingham MSA through unlawful discrimination by redlining Majority-Black Neighborhoods.
- i. “**Majority-Black Neighborhood**” means a census tract in the Birmingham MSA in which more than 50% of the residents are identified as Black or African American based on the 2020 U.S. Census.
- j. “**Plaintiffs**” means the Consumer Financial Protection Bureau and the United States of America.
- k. “**Qualified Applicant**” means an applicant who applies for a mortgage loan for a residential property located in a Majority-Black Neighborhood that will serve as the applicant’s principal residence and is qualified for a mortgage

under the underwriting standards that Fairway applies to the mortgage loans it originates.

- l. **“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 Fairway based on the Lawsuit Subject Matter.
- m. **“Supervision Director”** means the Assistant Director of the Office of Supervision for the Consumer Financial Protection Bureau, or their delegate.

CONDUCT PROVISIONS

I

Prohibited Conduct

IT IS ORDERED that:

6. Fairway and its officers, agents, servants, employees, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, is permanently restrained from discriminating by engaging in acts or

practices that constitute redlining of Majority-Black Neighborhoods in the Birmingham MSA. Nothing in this Order shall be read as an exception to this Paragraph.

II

Credit Needs Assessment and Remedial Plan

IT IS FURTHER ORDERED that:

7. Fairway must submit to Plaintiffs for non-objection a credit needs assessment for Majority-Black Neighborhoods in the Birmingham MSA (Credit Needs Assessment). A Credit Needs Assessment is a research-based market study that identifies for a lender the needs for financial services in a geographic area.

8. The Credit Needs Assessment must include:

- a. an analysis of recent available demographic and socioeconomic data describing Majority-Black Neighborhoods;
- b. an evaluation (to include market research and interviews) of the residential mortgage credit needs of, and corresponding lending opportunities in, Majority-Black Neighborhoods, including, but not limited to, the need for purchase, refinance, and home improvement loans, and the need for and feasibility of alternative mortgage products and programs that Fairway does not currently offer in the Birmingham MSA;
- c. an assessment of potentially appropriate new retail office locations and hours of operation in Majority-Black Neighborhoods;
- d. a review of the availability and feasibility of relevant federal, state, and local government programs that are available to Qualified Applicants seeking and obtaining residential mortgage loans in the Birmingham MSA;

- e. meetings with representatives of community organizations involved in promoting fair lending, home ownership, or residential development in affected Majority-Black Neighborhoods;
- f. potential strategies for how Fairway can provide residential mortgage loan products and services to Qualified Applicants in Majority-Black Neighborhoods; and
- g. recommendations that address how each requirement of the Order set forth in Sections III through IX should be carried out to best achieve the remedial goals of this Order, including the number of annual outreach and advertising events that Fairway should conduct to best increase applications for credit secured by properties in majority-Black Neighborhoods.

9. The Credit Needs Assessment must be conducted by an independent, qualified third-party consultant(s) selected by Fairway and subject to non-objection by Plaintiffs. Within 30 days of the Effective Date, Fairway must submit to Plaintiffs for non-objection the name(s) and qualifications of the third-party consultant(s) and a statement of work for the consultant(s) describing their proposed methodology for conducting the Credit Needs Assessment. If Plaintiffs object to the selected third-party consultant(s) and/or the statement of work, within 15 days of Plaintiffs' objection, Fairway must propose a new third-party consultant(s) and submit their qualifications to Plaintiffs for non-objection and/or revise and resubmit the statement of work.

10. Within 90 days of Plaintiffs' written notice of non-objection regarding the third-party consultant and statement of work, Fairway must submit the Credit Needs Assessment described in Paragraphs 7-8 to Plaintiffs for non-objection. If Plaintiffs object to any portion of the Credit Needs Assessment, Fairway must take appropriate corrective action and resubmit the

Credit Needs Assessment within 15 days of receiving the objection. Within 10 days of Plaintiffs' written notice of non-objection to the Credit Needs Assessment, Fairway must distribute a copy of the Credit Needs Assessment to all Covered Staff and Officials.

11. Within 60 days of Plaintiffs' written notice of non-objection to the Credit Needs Assessment, Fairway must submit a remedial plan that details, in light of the recommendations made in the Credit Needs Assessment, the actions Fairway proposes to take to comply with each requirement of this Order set forth in Sections III through IX (e.g., loan subsidy, community partnerships, and advertising) (Remedial Plan), including the percentage of the subsidy fund provided through the Loan Subsidy Program set forth in Section VI that must be applied to home purchase loans.

12. The Remedial Plan must also include:

- a. the steps Fairway will take to revise its mortgage lending policies and practices to address redlining risks, including, at a minimum, risk that may arise from office locations or assignment of loan officers to office locations, loan officer outreach and referral relationships, types of loan products, and marketing in the Birmingham MSA;
- b. the adoption of, or changes to, written policies and procedures regarding Fairway's marketing, as well as the training and monitoring of its loan officers in marketing mortgage loan products, soliciting mortgage loans, and originating mortgage loans in the Birmingham MSA;
- c. the adoption of, or changes to, processes for ongoing statistical monitoring of mortgage redlining risk in the Birmingham MSA, including statistical peer

analysis of the percentage of applications and originations from Majority-Black Neighborhoods in the Birmingham MSA; and

- d. the adoption of, or changes to, the processes for reporting redlining risk or associated remedial efforts in the Birmingham MSA to the Board.

13. The Remedial Plan must include specific timeframes for implementation of the actions identified in Paragraphs 11-12 and a mechanism for keeping the Board apprised of their status. The proposals within the Remedial Plan will be subject to non-objection by Plaintiffs.

14. If Plaintiffs object to any portion of the Remedial Plan, Fairway must make revisions and resubmit the Remedial Plan within 15 days of receiving the objection. Fairway must begin implementing the Remedial Plan within 30 days of Plaintiffs' written notice of non-objection to it. Any material changes to the Remedial Plan are subject to Plaintiffs' prior non-objection.

III

Fair Lending Training

IT IS FURTHER ORDERED that:

15. Fairway must ensure that all Covered Staff and Officials receive annual live or interactive fair lending training. The training must include topics on implicit racial bias, conduct that constitutes redlining, and how to detect, prevent, and remedy redlining, as well as training on Fairway's obligations under ECOA, Regulation B, the FHA, and this Order. Fairway will implement a system for each Covered Staff and Official to acknowledge that they completed the fair lending training. All training attendees will be required to demonstrate proficiency. Fairway must bear all costs associated with the training.

16. Within 45 days of the Effective Date, Fairway must submit the proposed training curriculum to Plaintiffs for non-objection. If Plaintiffs object to any portion of the training curriculum, Fairway must make revisions and resubmit the training curriculum within 15 days of receiving the objection.

17. Within 30 days of Plaintiffs' written notice of non-objection regarding the proposed training curriculum, Fairway must commence delivery of the training described in this Section with training to conclude within 45 days. Fairway must provide a report to Plaintiffs that includes the acknowledgements and demonstrations of proficiency described in Paragraph 15 as part of its annual Compliance Report under Paragraph 51.

18. Any person who becomes a Covered Staff or Official must, within 30 days of beginning such position, receive the training described in Paragraph 15.

IV

Manager of Community Lending

IT IS FURTHER ORDERED that:

19. Within 90 days of the Effective Date, Fairway must designate a full-time employee as a Manager of Community Lending with responsibility for overseeing the development of Fairway's lending in Majority-Black Neighborhoods and Fairway's compliance with Sections III through IX of this Order. Fairway must maintain this position throughout the term of this Order. If the Manager of Community Lending leaves the position or a new Manager of Community Lending is appointed at any time during the term of this Order, Fairway must notify Plaintiffs in writing within 10 days of such change.

20. The Manager of Community Lending must report directly to Fairway's Executive Vice President of Fair Lending.

21. The Manager of Community Lending and Fairway will oversee the continued development of lending in Majority-Black Neighborhoods within the Birmingham MSA consistent with the action steps contained in the Credit Needs Assessment, coordinate the community lending initiatives and outreach programs required under this Order, promote financial education, serve as a resource to Fairway's staff to encourage and develop more lending to Qualified Applicants within Majority-Black Neighborhoods, monitor loan officers' solicitation and origination of loans in Majority-Black Neighborhoods, and build relationships with community groups. The Manager of Community Lending must provide reports on at least an annual basis to the Board and Chief Executive Officer of Fairway on Fairway's activities under Sections III through IX of this Order.

V

Location and Personnel to Serve Majority-Black Neighborhoods

IT IS FURTHER ORDERED that:

22. Subject to any applicable approval of the appropriate regulator or licensing agency, within 7 months of the Effective Date Fairway must open or acquire one new loan production office or full-service retail office located in a Majority-Black Neighborhood. The office must be in a retail-oriented space in a visible location and have signage that is visible to the general public. The office must accept first-lien mortgage loan applications and must provide, at a minimum, the full range of services and hours of operation offered at Fairway's other retail location(s) in the Birmingham MSA. The location of the office must consider the recommendations of the Credit Needs Assessment required by Section II and will be subject to

Plaintiffs' non-objection. If Plaintiffs object to the location of the office, Fairway must submit a new proposed location with 30 days of receiving the objection.

23. Once the office required by Paragraph 22 has been established, Fairway must assign at least one full-time mortgage loan officer or community lending officer to the new office whose responsibilities will include soliciting mortgage loan applications from Majority-Black Neighborhoods in the Birmingham MSA. This individual must receive compensation that is no less favorable than the compensation provided to other Fairway loan officers in the Birmingham MSA. Fairway must maintain the mortgage loan officer or community lending officer assignment described in this Paragraph for the term of this Order.

VI

Loan Subsidy Fund

IT IS FURTHER ORDERED that:

24. Fairway must invest at least \$7,000,000 in a loan subsidy fund to increase the mortgage credit extended in Majority-Black Neighborhoods (Loan Subsidy Program). Through the Loan Subsidy Program, Fairway must offer home purchase, refinance, and home improvement loans to Qualified Applicants on a more affordable basis than otherwise available from Fairway.

25. Loan subsidies under the Loan Subsidy Program will be provided through any of the following means, or a combination thereof:

- a. originating a mortgage loan at an interest rate below the otherwise prevailing market interest rate offered by Defendant;
- b. down payment assistance in the form of a direct grant;
- c. closing cost assistance in the form of a direct grant;

- d. payment of the initial mortgage insurance premium on loans subject to such mortgage insurance; or
- e. other assistance measures, if approved by Plaintiffs in writing.

The combined forms of loan subsidies set forth in this Paragraph cannot exceed \$14,000 per Qualified Applicant unless Fairway receives written non-objection from Plaintiffs to increase that amount.

26. Fairway must offer each Qualified Applicant one or more of the forms of the loan subsidy set forth in Paragraph 25, subject to the terms of this Order and regulatory requirements. Fairway will retain discretion to offer more than one, or all, of the forms of assistance in Paragraph 25 to Qualified Applicants on an individual basis as it deems appropriate subject to regulatory requirements. Fairway must exercise this discretion in a manner that is consistent with originating mortgage loans to Qualified Applicants, with due reliance upon the applicable mortgage loan underwriting standards and will have discretion to provide the loan subsidy among its mortgage loan products.

27. The investment in the Loan Subsidy Program that is set forth in Paragraph 24 must consist only of the cost of providing the loan subsidies to consumers described in Paragraph 25 and not the cost of implementing the Loan Subsidy Program, which will be separately borne by Fairway. Loan subsidies under the Loan Subsidy Program must be provided throughout the term of the Order set forth in Section XIX, so long as funds remain for the Loan Subsidy Program.

28. No provision of this Order, including this Section, requires Fairway to make any unsafe or unsound loan or to make a loan to a person who is not qualified for the loan based upon lawful, nondiscriminatory terms. Fairway's underwriting standards applied to consumers seeking

loans for properties located in Majority-Black Neighborhoods must be no less favorable than the underwriting standards applied to loans sought by consumers seeking loans for properties in other census tracts in the Birmingham MSA. Loans that Fairway originates under the Loan Subsidy Program will not exceed the conforming loan limit established by the Federal Housing Finance Agency. Nothing in this order relieves Defendant of its responsibilities to comply with Federal consumer financial law, 12 U.S.C. § 5481(14).

VII

Advertising and Outreach

IT IS FURTHER ORDERED that:

29. Fairway must spend at least \$500,000 over the term of this Order on advertising and outreach to increase lending in Majority-Black Neighborhoods, as set forth in this Section.

30. Fairway's advertising and outreach under this Section must be informed by the findings and recommendations of the Credit Needs Assessment required in Section II, must advertise Fairway's residential loan products for purchase, refinance, and home improvement loans and the Loan Subsidy Program to Majority-Black Neighborhoods, and must seek to generate applications for mortgage loans from Qualified Applicants.

31. Fairway must include on all of its written advertising or promotional materials referencing residential mortgage loans, including digital and online advertising, an Equal Housing Opportunity logo, slogan or statement. All audio advertising will include an audible statement that Fairway is an "Equal Opportunity Lender" or an "Equal Housing Lender."

32. Fairway must conduct or sponsor at least two outreach programs in the Birmingham MSA each year during the term of this Order. These programs will be designed for real estate professionals and entities that can be identified as engaging in the residential real

estate-related business in Majority-Black Neighborhoods. Through these programs, Fairway must inform attendees of its products and services for purchase, refinance, and home improvement loans, including the Loan Subsidy Program described in this Order, and otherwise develop business relationships with them, as appropriate considering the remedial goals of this Order. Fairway may offer these outreach programs at its new office location required to be opened under Paragraph 22 or at another location reasonably convenient to the business operations of the attendees and to Majority-Black Neighborhoods.

VIII

Consumer Financial Education

IT IS FURTHER ORDERED that:

33. Fairway must spend at least \$250,000 for the purpose of funding a consumer financial education program that considers the results of the Credit Needs Assessment required by Section II and is designed to provide information, training, and counseling services about consumer finance to individuals in Majority-Black Neighborhoods to help identify and support Qualified Applicants.

34. Through the consumer financial education program described in Paragraph 33, Fairway must sponsor at least two financial education events each year during the term of this Order, to be offered by community or governmental organizations with which Fairway partners pursuant to Section IX. Salaries or other compensation for participating personnel of Fairway or any of its affiliates will not be credited towards the amount spent on these programs.

35. Fairway may offer these consumer financial education events at its new office location required to be opened under Paragraph 22 or at another location reasonably convenient to Majority-Black Neighborhoods.

IX

Community Development Partnership Program

IT IS FURTHER ORDERED that:

36. Fairway must spend at least \$250,000 on partnerships with one or more community-based or governmental organizations that provide:
- a. home repair or other grants designed to assist homeowners who experience financial distress or deferred maintenance on their properties; or
 - b. consumer financial education, homeownership, or foreclosure prevention services.

These grants or services must be provided to residents of Majority-Black Neighborhoods.

37. Fairway must develop the partnerships described in Paragraph 36 in a manner consistent with the recommendations of the Credit Needs Assessment required by Section II; specifically, Fairway must form partnerships with organizations that will aid it in marketing its residential loan products for purchase, refinance, and home improvement loans in Majority-Black Neighborhoods and extending credit to Qualified Applicants seeking loans for properties in Majority-Black Neighborhoods.

38. During the term of this Order, Fairway must evaluate its partnerships annually to identify any required changes to the program to better meet the residential credit needs of Majority-Black Neighborhoods, and the evaluation must be presented to Plaintiffs for non-objection. Fairway must present a summary of its evaluation and any proposed changes to Plaintiffs as a part of its annual Compliance Report under Paragraph 51. Any proposed changes will be subject to Plaintiffs' non-objection.

X

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

39. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint, Fairway must pay a civil money penalty of \$1,900,000 to the Bureau.

40. Within 10 days of the Effective Date, Fairway 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.

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

42. Fairway, for all purposes, must treat the civil money penalty paid under this Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Fairway 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 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 Order.

43. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Fairway may not argue that Fairway is entitled to, nor may Fairway 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 Fairway based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Fairway 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.

XI

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

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

45. Fairway relinquishes all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Fairway.

46. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any subsequent action by the Plaintiffs to enforce the Order or its rights to any payment or monetary judgment under the Order.

47. Fairway acknowledges that its Taxpayer Identification Number (Employment Identification Number), which Fairway previously submitted to the Bureau, may be used for