

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 2:16-cv-2040-SHM
	)	
EVOLVE BANK & TRUST,	)	
	)	
	)	
Defendant.	)	
_____	)	

**CONSENT ORDER**

**I. INTRODUCTION**

This Consent Order (“Order”) fully and finally resolves the claims of the Plaintiff (referred to herein as either the “United States” or the “Department of Justice”) that the Defendant, Evolve Bank & Trust (“Evolve” or “Bank”) violated the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-3619, by discriminating on the basis of disability, and violated the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-1691f, by discriminating on the basis of receipt of public assistance.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. The parties have entered into the Order to avoid the risks, expenses, and burdens of litigation and to resolve voluntarily the claims of the Defendant’s alleged violations of the FHA and the ECOA set out in the Complaint.

**II. BACKGROUND**

Evolve is wholly owned by Evolve Bancorp Inc. and is headquartered in Memphis, Tennessee. Evolve offers mortgage loans via branches and loan production offices in 18 states.

Evolve provides a diversified range of banking and non-banking financial services and products, and its primary regulator is the Federal Reserve Board.

The United States alleges that Evolve discriminated against mortgage applicants on the basis of disability and receipt of disability income by requiring some applicants, as a condition of originating a mortgage loan, to provide a letter from a doctor to show that Social Security Disability Insurance (“SSDI”) income and other disability income would continue. Evolve denies these allegations and states that it has treated loan applicants fairly and without regard to impermissible factors such as handicap or disability.

To resolve these matters, Evolve has agreed to make certain monetary payments to mortgage applicants and borrowers who either were required, or may have been requested, to provide a letter from a doctor or other medical information to show that their SSDI income or other disability income would continue (“Affected Borrowers”). Evolve also agrees to adopt and maintain revised policies with regard to disability income, and provide training to its employees to ensure that mortgage applicants with a disability are treated in a manner that does not discriminate on the basis of disability or receipt of public assistance, consistent with the requirements of the FHA and the ECOA.

### **III. REMEDIAL ORDER**

1. The Effective Date shall be the date on which the Order is approved and entered by the Court.
2. Evolve, including all of its officers, employees, agents, assignees, successors in interest, and all those in active concert or participation with any of them, are hereby enjoined from engaging in any act or practice that unlawfully discriminates against a mortgage loan applicant on the basis of disability or receipt of public assistance in connection with a submitted or potential mortgage application. This prohibition includes, but is not limited to, the adoption,

performance, or implementation of any policy, practice, or act that results in unlawful discrimination against an applicant with a disability or an applicant who relies on SSDI income or other disability income.

**A. Policies and Procedures**

3. As a continuation of actions taken by Evolve since 2013, within 30 days of the Effective Date, Evolve will adopt and publish new policies regarding proper documentation of SSDI and other disability income when underwriting mortgage loans, which have been approved by the United States. Evolve shall maintain the policies concerning verification or documentation of SSDI and other disability income (collectively, the “Disability Income Policies”) during the term of the Consent Order. During the term of this Consent Order, any proposed changes to the Disability Income Policies shall be submitted to the United States for approval, provided that such approval shall not be unreasonably withheld. The United States shall make a determination regarding proposed changes within 30 days of receipt.

4. Evolve shall not request that an applicant for a mortgage loan provide a letter from a doctor to document or substantiate SSDI or other disability income or to establish that SSDI or other disability income will continue.

**B. Training**

5. As a continuation of actions taken by Evolve since 2013, during the term of this Order, as part of its regular training for employees, Evolve shall continue to provide equal credit opportunity training for management officials and employees who participate in taking applications for, underwriting, originating, or pricing loans secured by residential real estate. Evolve shall provide equal credit opportunity training to each new management official or employee whose responsibilities include those set forth in the preceding sentence within 90 days

of beginning his or her employment in that position. The training shall include the relevant terms of this Order, the policies referenced therein, the requirements of the FHA and the ECOA, and the responsibilities of employees under each; it shall address proper documentation of disability income.

6. Within 90 days of the Effective Date Evolve shall provide to each management official and employee who participates in taking applications for, underwriting, originating, or pricing loans secured by residential real estate, a copy of the Order and the policies referenced in Paragraph 3 above, together with training relating to the Order, the policies, and proper documentation of disability income. All management officials and employees who receive a copy of the Order and policies shall execute the Employee Acknowledgement at Appendix A, which may be executed in substantially similar content through an email or other electronically recorded response. The content of the training required by Paragraphs 5 and 6 shall be approved in advance by the United States. Any expenses associated with this training program shall be borne by Evolve.

**C. Compensation for Identified Affected Borrowers**

7. Within 30 days of the Effective Date, the United States shall provide Evolve with a list of 50 borrowers or loan applicants who have been identified by the United States as affected borrowers (“Identified Affected Borrowers”), together with the compensation amounts determined by the United States as set forth herein. Payments to Identified Affected Borrowers are in amounts of \$1,000, \$2,500, or \$5,000, depending upon circumstances. These compensation amounts are mutually exclusive and are to be paid on a per-loan or per-application basis such that the payment amount must be split between co-borrowers or co-applicants equally. The total amount of compensation for these 50 Identified Affected Borrowers is \$86,000 (“the

Settlement Fund”). Within thirty (30) days of receipt of the list of Identified Affected Borrowers, Evolve shall send a letter substantially in the form of Appendix B, a release in the form of Appendix C, and a postage paid return envelope to each Identified Affected Borrower. All mailings shall be approved in advance by the United States. The term “borrower” as used in this order shall include loan applicants who began the mortgage loan application process with Evolve.

8. Evolve shall use best efforts, using all reasonable methods, to locate and contact the Identified Affected Borrowers, including (a) searching for updated addresses via Evolve’s own address records for other products, Lexis Nexis, and other suitable address databases, (b) sending duplicate letters to updated addresses, and (c) contacting affected borrowers by telephone. Evolve shall regularly report to the United States its progress on locating and contacting Identified Affected Borrowers.

9. Within ten (10) business days of receipt of a properly executed release in the form of Appendix C from any affected borrower identified under the Consent Order, Evolve shall send a check for the appropriate compensation amount via U.S. Postal Service Certified Mail or similar delivery service.

10. The United States has determined compensation amounts based on the following criteria:

- a. \$1,000 in monetary damages if there is information in the loan file indicating that the borrower was asked to provide a letter from his or her doctor.
- b. \$2,500 in monetary damages if there is information in the loan file or other contemporaneous record indicating that the borrower was asked to provide a

letter from a doctor regarding the nature or severity of the borrower's disability.

- c. \$5,000 in monetary damages if the borrower qualifies under either Paragraph 13(a) or 13(b) above; and (1) there is information in the loan file or other contemporaneous record indicating that the borrower was unwilling to provide a letter from a doctor or objected to providing a letter from a doctor, or (2) there is information in the loan file or other contemporaneous record indicating that the loan was denied because the applicant did not provide a letter from a doctor.

11. Evolve shall provide a cost-free means for borrowers to contact it on issues related to this settlement, including an email address, a toll-free telephone number, and means for persons with disabilities to communicate effectively, including TTY.

12. No borrower shall be paid any amount under this Order until he or she has executed and delivered to Evolve a written release.

13. Evolve shall not be entitled to a set-off, or any other reduction, of the amount of payments to a borrower because of any debts owed to Evolve by a borrower. Evolve also shall not refuse to make a payment based on a release of legal claims previously signed by any borrower.

14. During the first year of the Order, if any person contacts the United States or Evolve claiming that he or she should be compensated under this Order, or should be paid an amount different than the amount determined by the United States, Evolve shall inform the United States and shall undertake a review of all records related to the mortgage application of the person. Evolve shall report to the United States all such contacts and the results of the

review of records, and the United States shall determine whether the person should be paid and the amount of the payment, which shall be consistent with the criteria set forth at paragraph 10. Determinations by the United States shall be final. Evolve shall make any payments under this paragraph from the Settlement Fund, and if the Settlement Fund is insufficient, from its own funds.

15. All money not distributed to Affected Borrowers from the \$86,000 Settlement Fund shall be distributed to one or more organizations that provide services including credit and housing counseling, legal representation of borrowers seeking to obtain a loan modification or to prevent foreclosure, financial literacy, or other related programs (“Organization”). Before distributing the funds, Evolve will provide the name of the Organization(s) and a description of the program(s) to which the remainder of the Settlement Fund is to be allocated and obtain the non-objection of the United States. Evolve will submit the name of the Organization(s) and supporting information to the United States 15 months after the Effective Date, and the United States shall respond to Evolve’s request for non-objection within 10 days of Evolve’s request. The United States may request modification of the selected program(s) or before approving the Organization(s). Organization(s) must not be related to Evolve or any entity owned related to Evolve. The parties shall obtain the Court’s approval for the Organizations and the amount to be distributed to each prior to distribution provided by Paragraph 15. Evolve shall require each Organization to submit to Evolve and the United States a report detailing that funds are utilized for the purposes identified in Paragraph 15 within one year after the funds are distributed and every year thereafter until the funds are exhausted.

#### **IV. EVALUATING AND MONITORING COMPLIANCE**

16. Within 90 days of the Effective Date, Evolve shall implement a monitoring program designed to confirm compliance with its policies regarding documentation of SSDI

income and other disability income and the Order, which will monitor loan processing and underwriting activities for compliance with the Bank's policies and applicable fair lending laws with respect to applicants that rely on SSDI income or other disability income in mortgage applications received after March 29, 2013. Evolve will provide a description of the monitoring program to the United States within 60 days of the Effective Date of the Order. Evolve shall maintain the monitoring program or a substantially similar monitoring program during the term of the Order.

17. If the monitoring program identifies borrowers who meet the criteria for compensation subsequent to the entry of this Order, Evolve shall report information concerning the borrowers to the United States and the United States shall determine whether the person should be compensated and the amount of the payment consistent with the methodology used to determine compensation for the Identified Affected Borrowers.

18. For the duration of the Consent Order, Evolve shall maintain a complaint resolution program to address complaints alleging discrimination on the basis of disability and/or receipt of public assistance with regard to requests for a doctor's letter concerning verification of disability income ("Complaints"). Documentation regarding Complaints, if any, shall be included in the reports referenced in Paragraph 17. There is no requirement under the Consent Order that any Complaint necessarily be resolved for or against Evolve.

19. For the duration of the Order, Evolve shall retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States shall have the right to review and copy such records upon request, including files and electronic data for mortgage applications made during the duration of the Order.



20. In addition to the submission of any other plans or reports specified in the Order, Evolve shall submit reports to the United States on its progress in completing the requirements of the Order. Each such report shall provide a complete account of Evolve's actions to comply with each requirement of the Order during the previous reporting period, an assessment of the extent to which each obligation was met, an explanation of why any particular obligation was not met for the previous reporting period, and any recommendations for additional actions to achieve the obligations of the Order. Evolve shall submit reports every six months in the first year after the Effective Date and shall submit a final report 60 days prior to the expiration of the Order demonstrating full compliance with all obligations under the Order. In addition, if applicable, Evolve shall attach to the reports copies of training materials disseminated pursuant to the Order.

#### **V. ADMINISTRATION**

21. The Order shall remain in effect for 24 months after the Effective Date. Notwithstanding the above, the Order may be extended further upon motion of the United States to the Court, for good cause shown.

22. The details in administration set forth in Paragraphs 7 through 18 may be modified by written agreement of the United States and Evolve and without further Court approval. Any time limits for performance fixed by the Order may be extended by written agreement of the parties. Other modifications to the Order may be made only upon approval of the Court, upon motion by either party.

23. The Order shall be binding on Evolve, including all its officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event Evolve seeks to transfer or assign all or part of its respective operations, and the successor or assign intends on carrying on the same or similar type

of business, as a condition of sale, Evolve shall obtain the written agreement of the successor or assign to any obligations remaining under the Order for its remaining term.

24. Nothing in the Order shall excuse Evolve's non-compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Evolve that imposes additional obligations on Evolve.

25. The parties agree that, as of the Effective Date, litigation is not "reasonably foreseeable" concerning the matters described in the Order. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Order, the party is no longer required to maintain such a litigation hold.

26. In the event that any disputes arise about the interpretation of or compliance with the terms of the Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. If the United States believes that Evolve has violated any provision of the Order, it will provide Evolve written notice thereof and allow 30 days to resolve the alleged violation before presenting the matter to this Court. In the event of either a failure by Evolve to perform in a timely manner any act required by the Order or an act by Evolve in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

27. Evolve's compliance with the terms of the Order, as those terms apply to each party, shall fully and finally resolve all FHA claims and all ECOA claims that are raised in the Complaint's allegations of discrimination on the basis of disability and discrimination on the basis of receipt of public assistance, including all claims for equitable relief and monetary damages and penalties arising from those claims against Evolve. The Order does not release any

other legal claims, including claims that may be held or are currently under investigation by any federal agency, claims for practices not addressed in the Complaint's allegations, or any claims that may be pursued for actions that may be taken by any executive agency established by 12 U.S.C. § 5491 or the appropriate Federal Banking Agency ("FBA"), as defined in 12 U.S.C. § 1813(q), against Evolve, any of their respective affiliated entities, and/or any institution-affiliated party of Evolve, as defined in 12 U.S.C. § 1813(u), pursuant to 12 U.S.C. § 1818 or any statute or regulation. The Order does not resolve and release any claims other than claims for discrimination.

28. The United States and Evolve shall each bear their own costs and attorneys' fees associated with this litigation.

29. The Court shall retain jurisdiction for the duration of the Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice.

SO ORDERED this 21<sup>st</sup> day of January, 2016.

s/ Samuel H. Mays, Jr.  
SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE

The undersigned hereby apply for and consent to the entry of the Order:

**For Plaintiff United States of America:**

Dated: January 19, 2016

EDWARD L. STANTON, III  
United States Attorney  
Western District of Tennessee

VANITA GUPTA  
Principal Deputy Assistant Attorney General  
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**For Evolve Bank & Trust**

Dated: \_\_\_\_\_, 2016

          s/ Haydn J. Richards, Jr.            
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**APPENDIX A**

**Evolve Bank & Trust Employee Acknowledgment**

I acknowledge that I was provided information about and access to the relevant sections of the Consent Order entered by the Court in *United States v. Evolve Bank & Trust* (W.D. Tenn.), as well as Evolve Bank & Trust's written policies regarding proof of continuance of disability income. I have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Job Title

\_\_\_\_\_  
Date

**APPENDIX B**

[Letter to Identified Affected Borrowers]

The United States settled certain claims regarding alleged discrimination on the basis of disability against Evolve Bank & Trust. Among other things Evolve Bank & Trust has agreed to compensate mortgage loan applicants who were asked to provide a letter from a doctor or other medical information to document Social Security Disability Insurance (“SSDI”) income or other disability income.

On [date] the United States District Court for the Western District of Tennessee entered an order regarding this settlement. **Under the Court’s order, Evolve Bank & Trust has agreed to pay you[ ]**. To receive your payment, you must sign and return the enclosed Release. By signing the Release, you agree that you will not sue Evolve Bank & Trust or any company affiliated with Evolve Bank & Trust for any claims you may have against them based on alleged discrimination on the basis of your SSDI income or other disability income. If you decide to sign this Release, please write the date, print your name and sign your name where designated. **You should return the signed Release in the enclosed pre-addressed postage pre-paid envelope.**

After you sign and return the release, the money that is to be paid to you will be sent to you by check.

Please be aware that the money you receive may be considered taxable income and thus may affect your federal, state, or local tax liability. The United States Department of Justice and Evolve Bank & Trust cannot give you any advice on tax or other legal matters. We encourage you to consult with a qualified individual or organization about any possible tax or other consequences resulting from your receipt of this payment.

If you do not want to participate in this settlement, you may decline to do so. By declining to participate, you will give up your right to receive money through this settlement, but will not waive any other rights or claims that you believe you may have.

Please also be advised that government attorneys cannot act as your private attorney. Therefore, you may want to consult with a private attorney to discuss this matter and the options available to you or to have an attorney of your choice contact us.

If you have questions about the settlement, or if any of your contact information changes, please call 1-888-XXX-XXXX (TTY 1-855-XXX-XXXX) or email XXX@XXX.com. None of the parties to the settlement can offer advice on whether you should participate in the settlement.

**APPENDIX C**

Release

In exchange for the payment to me of \$\_\_\_\_\_ and effective upon that payment, I hereby release and forever discharge all claims, rights, remedies, and recoveries related to the facts of housing and credit discrimination on the basis of disability and receipt of public assistance in the court case referenced above, and in connection with my application(s) for a residential mortgage. These claims may be known and unknown, up to and including the date of execution of this release. I understand that this releases those claims, rights, remedies and recoveries against Evolve Bank & Trust and against any and all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors in interest, or assigns.

Executed this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address