

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 3:25-cv-00026
)	
v.)	
)	
SOUTHEAST BANK,)	
)	
Defendant.)	

CONSENT ORDER

INTRODUCTION

1. The parties jointly submit this Consent Order for approval and entry by the Court to resolve claims of the United States of America (“United States”), simultaneously filed in a Complaint, in which the United States alleges that SouthEast Bank (“the Bank” or “SouthEast”) violated the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-1691f, and its implementing regulation, Regulation B, 12 C.F.R. Part 1002, by discriminating against Black and American Indian/Alaska Native (“AI/AN”) post-secondary education graduates through Education Loan Finance, a national, online student loan consolidation and refinance program (“the ELFI Refinance Program”).

2. The United States’ Complaint alleges that, since its launch in December 2015, the ELFI Refinance Program has required applicants to graduate from an “eligible school” to qualify for an ELFI Refinance Program loan. The Complaint alleges that up until April 5, 2021, SouthEast defined an eligible school, in part, as one that fell below the Cohort Default Rate (“CDR”) threshold that SouthEast management periodically established based on national averages of annual CDR data calculated by the United States Department of Education for

institutions of higher education. Under its “CDR Policy,” SouthEast did not allow graduates of schools with CDRs above its established thresholds to proceed with a student loan refinance or consolidation application.

3. As alleged in the United States’ Complaint, SouthEast’s CDR Policy disproportionately discouraged and denied ELFI Refinance Program loans to Black and AI/AN degree recipients as compared to similarly situated graduates of other demographic groups. The Complaint also alleges that SouthEast’s CDR Policy disproportionately excluded graduates of majority-Black post-secondary institutions, including Historically Black Colleges and Universities (“HBCUs”). The Complaint further alleges that when SouthEast’s CDR Policy denied credit to graduates, SouthEast failed to provide those applicants proper notification of their denial. The Complaint also alleges that SouthEast lacked a legitimate, non-discriminatory reason for its CDR Policy.

4. SouthEast Bank represented to the United States that on April 6, 2021, it stopped using its CDR Policy to address and resolve concerns of the Federal Deposit Insurance Corporation (“FDIC”), the Bank’s primary federal regulator.

5. The FDIC referred the matter to the United States on May 24, 2021, under ECOA, 15 U.S.C. § 1691e(g). On July 22, 2021, the United States notified the Bank that it initiated an investigation under ECOA focused on whether the Bank engaged in a pattern or practice of discrimination on the basis of race and national origin in its eligibility standards for and underwriting of student loan products.

6. After conducting its investigation and reviewing the information provided by the Bank, on December 18, 2024, the United States informed SouthEast that the Assistant Attorney General for Civil Rights had authorized filing the Complaint described in Paragraphs 2 and 3.

7. The Parties agree that the Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 15 U.S.C. § 1691e(h), and that venue is proper in this Court under 28 U.S.C. § 1391, because SouthEast conducts business, and its principal place of business is located, in this District.

8. No factual findings or adjudications have occurred in this case. The Parties enter into this Order to voluntarily resolve all claims arising from the conduct alleged in the Complaint. SouthEast denies any allegations of discrimination and all unlawful conduct specified in the Complaint. SouthEast asserts that throughout the period of time at issue in this proceeding and to the present, it has treated all consumers and customers fairly and without regard to impermissible factors such as race, color and national origin. SouthEast asserts that its CDR Policy is based on national averages of annual CDR data calculated and published by the United States Department of Education since 1990 for the purpose of determining Title IV federal assistance for institutions of higher education. It further asserts that the student loan refinance industry's credit underwriting model has been based on school CDR information, as well as other credit factors, for the past decade, as investors and rating agencies have relied on school CDR data for investment and rating purposes, in securitization financings. SouthEast further asserts that it enters into this settlement voluntarily and solely for the purpose of avoiding contested litigation with the United States, and to instead devote its resources to providing fair and equal access to student loans to qualified borrowers. SouthEast admits only to the facts necessary to establish this Court's jurisdiction over it and over the subject matter of this action. SouthEast asserts that it has a robust compliance program and training programs which include compliance with all state and federal laws and regulations.

9. The Parties agree that this Order's goals include serving the public interest and

remedying the alleged harm. The Parties also agree that full implementation of this Order's terms will resolve the claims asserted in the Complaint in a manner consistent with SouthEast's legitimate business interests.

10. This Order's "Effective Date" is the date upon which it is approved and entered by the Court.

Therefore, it is **ADJUDGED, ORDERED** and **DECREED**:

PROHIBITION AGAINST DISCRIMINATION

11. Defendants, including all of their officers, agents, servants, employees, and all other persons in active concert or participation with them who have actual notice of this Order, assignees, and successors in interest, are enjoined from engaging in any act or practice that discriminates against any applicant, or discriminatorily discourages any prospective applicant, on the basis of race in any aspect of a credit transaction in a manner that violates ECOA or Regulation B.

SETTLEMENT FUND

12. Within thirty (30) days of the Effective Date, SouthEast shall deposit \$1,300,000 in an interest-bearing escrow account to compensate aggrieved persons for monetary and other damages they may have suffered due to SouthEast's alleged violations of ECOA ("Settlement Fund"). Title to this account shall specify that it is "for the benefit of Aggrieved Persons under Order of the Court in *United States v. SouthEast Bank*, filed on January 18, 2025." SouthEast shall provide written verification of the deposit to the United States, along with the account number and identification of the depository institution, within five (5) days of depositing the funds described in this Paragraph. Any interest that accrues shall become part of the Settlement Fund and used as set forth in this Order. SouthEast shall pay any taxes, costs, or other fees

incurred by the Settlement Fund.

13. Persons eligible to receive compensation under the Settlement Fund, referred to herein as “Category 1 Aggrieved Persons,” are those who:

- a. created profiles on the ELFI Refinance Program website between December 2015 and April 5, 2021, by inputting their names, addresses, and/or email addresses, and verifying those email addresses (“ELFI Profile Creators”) but did not complete the credit application; and
- b. at the time of their ELFI Refinance Program profile creation had a bachelor’s, master’s, and/or advanced degree from a CDR-Ineligible school listed on the School List to be developed with the cooperation of the parties (the “Ineligible School List”).¹

14. Persons eligible to receive compensation under the Settlement Fund, referred to herein as “Category 2 Aggrieved Persons,” are those who:

- a. Apply for a refinance loan through the ELFI Refinance Program;
- b. Qualify under SouthEast’s underwriting standards;
- c. Graduated with a bachelor’s, master’s, or advanced degree from a school on the Ineligible School List; and
- d. Received an ELFI Refinance Loan with Southeast after the Effective Date.

15. The total amount paid by SouthEast collectively to Category 1 and Category 2 Aggrieved Persons shall not exceed the total amount of the Settlement Fund, including accrued

¹ The Ineligible School List shall include “CDR-Ineligible Schools,” which as used throughout this Order, are Title IV eligible, non-profit schools offering bachelor and/or graduate degrees whose graduates SouthEast would have otherwise considered for refinancing but excluded from consideration because the school’s CDR was above one or more national CDR thresholds set by SouthEast.

interest.

16. Within sixty (60) days of entry of this Order, SouthEast shall enter into a contract retaining an Independent Settlement Administrator (“Administrator”). The Administrator’s selection and terms of its contract related to duties under this Order shall be subject to the United States’ non-objection. SouthEast shall bear all costs and expenses of the Administrator. The Administrator’s contract shall require the Administrator to comply with the applicable provisions of this Order and to work cooperatively with the United States in conducting its activities, including reporting regularly and providing all reasonably requested information to the United States. The Administrator’s contract shall require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied it information and data. The Administrator’s contract shall require the Administrator, as part of its operations, to establish cost-free means for ELFI Profile Creators and Category 2 Aggrieved Persons to contact it, including an email address, a toll-free telephone number, and means for persons with disabilities and individuals with limited English proficiency to communicate effectively, including effective translation and interpretation services.

17. Payments from the Settlement Fund to Category 1 and Category 2 Aggrieved Persons shall be subject to the following conditions, provided that the details in administration of the Settlement Fund set forth in Paragraphs 18-24 can be modified by written agreement of the parties and without further Court approval.

Category 1 Aggrieved Persons

18. The Administrator’s contract shall require the Administrator to make its best efforts, using all reasonable methods as requested by the United States, to identify and notify Category 1 Aggrieved Persons, as defined in Paragraph 13, of their possible eligibility for compensation

under this Settlement Fund and to create a list of those Category 1 Aggrieved Persons who will be entitled to compensation (the “Compensation List”). As part of such efforts, the Administrator shall confirm the eligibility of, and obtain a release and such information that the United States reasonably considers necessary from, Category 1 Aggrieved Persons.

19. The Administrator’s contract shall require that, within sixty (60) days of the United States reviewing and approving language, the Administrator must email the approved release to all ELFI Profile Creators using the most recent email address in SouthEast’s records. The Administrator’s contract shall also require the Administrator to send emails accompanying the releases that, at minimum, explain that if the person graduated with a bachelor’s, master’s, or advanced degree from a school on the Ineligible School List,² the person may be eligible for compensation provided he or she executes and returns to SouthEast a copy of the agreed-upon release within sixty (60) days of the date of the email.³ The explanatory letter shall be subject to the review and non-objection of the United States.

20. SouthEast shall provide the United States with a quarterly accounting of the Administrator’s activities under Paragraphs 18 and 19, and the responses received by the Administrator. The Administrator’s contract shall require the Administrator to complete this responsibility, and provide the Compensation List to the United States for the United States’ non-objection, within a period of nine (9) months from the date of entry into its contract, subject to an extension of time as provided by Paragraph 50. The United States may make its own efforts to locate Category 1 Aggrieved Persons eligible for compensation from the Settlement Fund.

² The letter need not use the term “CDR-Ineligible School.” The letter should clearly specify all schools that qualify.

³ The Administrator may use online releases with electronic signatures.

21. The Settlement Fund shall be used to provide each Category 1 Aggrieved Person on the approved Compensation List a payment of \$2,000.

22. Payments from the Settlement Fund to Category 1 Aggrieved Persons shall be subject to the following conditions:

- a. No Category 1 Aggrieved Person shall be paid any amount from the Settlement Fund until he or she has executed and delivered to SouthEast a release, with language approved by the United States, of all pending discrimination claims, legal or equitable, that he or she might have against SouthEast regarding the claims asserted by the United States in its Complaint, so long as such claims accrued prior to the entry of this Order;
- b. In order to recover money from the Settlement Fund, each Category 1 Aggrieved Person must submit his or her release within sixty (60) days of receipt of the email from SouthEast under Paragraph 19; and
- c. The total amount each Category 1 Aggrieved Person can recover from the Settlement Fund is \$2,000.

Category 2 Aggrieved Persons

23. SouthEast will monitor loans made to Category 2 Aggrieved Persons and provide a list of those loans and borrowers to the Administrator (“Category 2 Aggrieved Persons List”) within ninety (90) days of the Effective Date and provide periodic updates to the Administrator every thirty (30) days thereafter. The Administrator’s contract shall require the Administrator to complete the responsibilities outlined with respect to Category 2 Aggrieved Persons within one (1) week of receiving each Category 2 Aggrieved Persons List, and provide it to the United States. The United States shall have thirty (30) days to provide any objection, subject to an

extension of time as provided by Paragraph 50.

24. The Settlement Fund shall be used to provide each Category 2 Aggrieved Person on a Category 2 Aggrieved Persons List a payment of \$5,000.

Administration of Settlement Fund Payments

25. The Administrator's contract shall require the Administrator to deliver payments to all Category 1 Aggrieved Persons on the Compensation List within sixty (60) days after the United States approves the Compensation List and SouthEast verifies that they are a degree holder from a school on the Ineligible School List. The Administrator's contract shall also require the Administrator to skip trace and redeliver any payment that is returned to the Administrator as undeliverable or not deposited within six (6) months. SouthEast shall provide to the United States a quarterly accounting of the Administrator's activities under this Paragraph.

26. The Administrator's contract shall require the Administrator to deliver payments to all Category 2 Aggrieved Persons on each Category 2 Aggrieved Persons List within sixty (60) days after the United States non-objects to the Category 2 Aggrieved Persons List. The Administrator's contract shall also require the Administrator to skip trace and redeliver any payment that is returned to the Administrator as undeliverable or not deposited within six (6) months. SouthEast shall provide to the United States a quarterly accounting of the Administrator's activities under this Paragraph.

27. The Administrator's contract shall require the Administrator to maintain the cost-free means described in Paragraph 16 for ELFI Profile Creators and Category 1 Aggrieved Persons to contact it at least until twelve (12) months from the date the United States approves the Compensation List under Paragraph 18. The Administrator's contract shall require the

Administrator to maintain the cost-free means described in Paragraph 16 for Category 2 Aggrieved Persons at least until five (5) months from the date the United States approves the final Category 2 Aggrieved Persons List under Paragraph 23. Category 1 Aggrieved Persons on the Compensation List and Category 2 Aggrieved Persons on the Category 2 Aggrieved Persons Lists shall have six (6) months to request reissuance of payments that have not been deposited.

28. SouthEast shall not be entitled to set-off, or any other reduction, of the amount of payment to any Category 1 Aggrieved Person on the Compensation List or Category 2 Aggrieved Person because of any debts owed by that person. SouthEast shall not refuse to make a payment based on a prior or unrelated release of legal claims or loan modification previously signed by any person.

CONSUMER FINANCIAL EDUCATION

29. SouthEast will spend no less than \$200,000 to provide consumer financial education programs to students and graduates of CDR-Ineligible schools with the goal of creating more borrowers who will be eligible for SouthEast's ELFI Refinance Program and publicizing the Settlement Fund.

30. Throughout the term of this Order, SouthEast will provide a minimum of two (2) consumer financial education programs per year targeted and marketed toward students and graduates of CDR-Ineligible Schools and held online. These seminars will cover credit counseling, financial literacy, or other related consumer financial education, to help identify and develop qualified loan applicants from CDR-Ineligible Schools.

31. SouthEast will conduct outreach to identify education partners, including student and alumni groups of CDR-ineligible schools, to guide the development and implementation of the

consumer financial education programs and to assist in promoting these programs. SouthEast may also independently develop these consumer financial education programs.

32. Within ninety (90) days of the Effective Date, SouthEast will submit to the United States for non-objection a list of its planned consumer financial education programs for the first twelve (12) months of this Order. The list shall specify the program date, target school, and any associated education partners (e.g., alumni or student group, university financial aid office, etc.). Beginning twelve (12) months after the Effective Date, SouthEast will submit to the United States an accounting of its completed and planned consumer financial education programs as part of its annual reporting requirement described in Paragraphs 40-43. These programs are subject to non-objection by the United States. Should SouthEast's list of planned consumer education programs for the upcoming year change, SouthEast will submit these changes to the United States for its non-objection as soon as practicable.

FAIR LENDING POLICIES, PROCEDURES, TRAINING, AND MONITORING

33. SouthEast will ensure appropriate fair lending policies, procedures, training, monitoring, controls, and oversight, including over SouthEast's hiring, marketing, and lending practices. Such policies and procedures will include proper implementation of the adverse action notification requirements mandated by ECOA, 15 U.S.C. §§ 1691(d)(2)-(3).

34. SouthEast will submit copies of all audit reports and portions of examination reports (subject to approval by the FDIC and/or Tennessee Department of Financial Institutions and/or any other prudential regulator) that relate to compliance with the laws defined in the Complaint

to the United States within sixty (60) days after the effective dates of such audit or examination reports.

Fair Lending Training

35. Within thirty (30) days of the Effective Date, SouthEast will provide a copy of the Complaint and Order to all employees involved in lending educational loans (including loans made through the ELFI Refinance Program), student loan marketing, fair lending compliance, and who have management responsibility over such employees; senior management with fair lending and marketing oversight; and members of Boards of Directors (collectively, “Relevant Staff and Officials”). SouthEast will provide opportunity for Relevant Staff and Officials to ask any questions about the Complaint and this Order, and SouthEast will provide answers.

SouthEast will implement a system for each individual to acknowledge that they received a copy of the Complaint and this Order, had the opportunity to ask questions, and received answers.

Within ninety (90) days of the Effective Date, SouthEast will provide a report to the United States that includes these acknowledgements, a list of all Relevant Staff and Officials and their titles, and a list of individuals to whom this Order was delivered and their titles.

36. Each year throughout the term of this Order, SouthEast will provide live and interactive training to Relevant Staff and Officials on SouthEast’s obligations under ECOA and Regulation B. The training presented in the first year after the Effective Date of the Order will also include a module (which may be a separate training) on the allegations in the Complaint and SouthEast’s obligations under this Order (“fair lending training(s)"). The content of the fair lending training(s) will be subject to non-objection by the United States. SouthEast will bear all costs associated with the training(s).

37. SouthEast will implement a system for each individual to acknowledge that they completed fair lending training(s). Within ninety (90) days of the United States' non-objection to the training curricula, SouthEast will provide a report to the United States that includes the training acknowledgements required in this Paragraph, a list of Relevant Staff and Officials who were required to complete the training(s) and their titles, and the date(s) on which Relevant Staff and Officials completed the training(s). For each subsequent annual training(s), SouthEast will submit the training acknowledgements, dates, and staff lists to the United States as part of SouthEast's annual reporting requirements under Paragraphs 40-43.

38. SouthEast will notify the United States, in writing, of any material revisions to the curricula. All such changes are subject to non-objection by the United States.

39. SouthEast will provide any individual who becomes a Relevant Staff or Official with a copy of the Complaint and this Order and the fair lending training(s), as discussed above, within thirty (30) days of beginning the covered position. As part of its annual reporting requirements under Paragraphs 40-46, SouthEast will report to the United States the new Relevant Staff and Officials' acknowledgements described in this Section, a list of new Relevant Staff and Officials and their titles, and the dates on which new Relevant Staff and Officials received the Complaint, this Order, and the fair lending training(s).

REPORTING AND RECORDKEEPING

40. Beginning twelve (12) months after the Effective Date, SouthEast will submit annual reports to the United States on its progress in complying with the terms of this Order and associated plans and programs. The final report will be delivered to the United States at least sixty (60) days prior to the expiration of this Order.

41. In addition to the submission of any other plans, reports, or accountings specified in this Order, the annual reports will provide a complete account of SouthEast's and the Administrator's material actions to comply with each requirement of this Order, and SouthEast's assessment of the extent to which each obligation was met and each plan was implemented, from the preceding year. If SouthEast falls short of its goals in the preceding year for any particular obligation or plan under this Order, SouthEast will provide an explanation of why it fell short and will make recommendations to achieve the goals set forth in this Order.

42. At minimum, and in addition to the contents described in Paragraphs 40-41, the annual reports will include:

- a. An accounting of all payments made under the Settlement Fund, described in Paragraphs 12-28.
- b. A list of SouthEast's consumer financial education programs, as required under Paragraphs 29-32, from the preceding year, specifying the program date; target school; any associated education partners (e.g., alumni or student group, university financial aid office, etc.); and number of attendees.
- c. Fair Lending Training acknowledgements, as required by Paragraphs 37 and 39.

43. SouthEast will attach to each annual report copies of training and promotional materials for the consumer financial education programs conducted under this Order.

44. All material sent to the United States under this Order shall be transmitted by email to the Department of Justice attorneys assigned to this matter, Abigail Marshak (Abigail.Marshak@usdoj.gov) and Sara Niles (Sara.Niles@usdoj.gov), or by other means agreed upon by the Parties. The United States will notify SouthEast in writing if the recipient list changes.

45. The United States will submit all non-objections described in this Order to SouthEast via email to the following recipients: Chris Willis (Chris.Willis@troutman.com), Lori Sommerfield (Lori.Sommerfield@troutman.com), and Christine Emello (Christine.Emello@troutman.com). SouthEast will notify the United States in writing if the recipient list changes.

46. SouthEast will retain all records related to its obligations under, and activities to carry out, this Order. SouthEast shall provide such records to the United States for review and copy upon request.

DURATION, MODIFICATION, AND ENFORCEMENT

47. This Order is effective immediately upon its entry by the Court and shall remain in effect for three (3) years from the Effective Date.

48. If, within two and a half (2.5) years of the Effective Date, SouthEast has not distributed all money from the Settlement Fund, or has not satisfied its obligations under Paragraph 29, SouthEast will contact the United States to discuss appropriate uses of the remaining funds. If the parties fail to reach agreement on an appropriate use of the remaining funds within ninety (90) days, SouthEast may submit the remaining funds to the U.S. Treasury, based on instructions to be provided by the United States, and close the accounts.

49. Any time limits for performance imposed by this Order may be extended by mutual written agreement of the parties. Other modifications, including to extend the period in which this Order is in effect, may be made only upon approval of the Court, by motion of any Party. If there are changes in material factual circumstances, the Parties will work cooperatively to discuss and attempt to agree to proposed modifications to this Order.

50. If the United States objects to any submission, the Parties will have thirty (30) days to confer and resolve their differences. The Parties may mutually agree to additional time to confer, if necessary. If the Parties are unable to resolve their differences, either party may bring the dispute to the Court for resolution.

51. The parties to this Order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event that a Defendant, whether willful or otherwise, fails to perform in a timely manner any act required by this Order or acts in violation of any provision of this Order, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance or non-performance of certain acts and an award of damages, costs, and reasonable attorney's fees that may have been occasioned by the Defendant's violation or failure to perform.

52. The United States may take reasonable steps to monitor SouthEast's compliance with this Order and ECOA.

53. This Order shall be binding on SouthEast, including all officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with them who have actual notice of this Order. In the event SouthEast seeks to transfer or assign all or part of its operations, and the successor or assignee intends on carrying on the same or similar use, as a condition of sale, SouthEast shall obtain the written agreement of the successor or assignee to any obligations remaining under this Order for its remaining term to the extent compliance with such obligations would be transferred or assigned.

54. SouthEast will notify the United States of any development that may materially affect compliance obligations arising under this Order, including but not limited to a dissolution,

assignment, sale, merger, or other action that would result in the emergence of a successor company to SouthEast; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against SouthEast; or a change in SouthEast's name or main office address. SouthEast will provide this notice as soon as practicable, but in any case, at least thirty (30) days before the occurrence of such event or, if applicable, the full execution of a definitive written agreement with respect to such event.

55. Nothing in this Order shall excuse SouthEast's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over SouthEast that imposes additional obligations on SouthEast.

56. This Court shall retain jurisdiction over this action for all purposes related to the enforcement of this Order throughout its term, after which the case shall be dismissed with prejudice.

COSTS OF LITIGATION

57. Except as provided in Paragraph 51, all parties shall be responsible for their own attorney's fees, expenses, and costs associated with this action.

TERMINATION OF LITIGATION

58. The parties agree that, as of the date of the entry of this Order, litigation is not "reasonably foreseeable" concerning the matters described in Paragraphs 1-5. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in Paragraphs 1-5, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Order.

SO ORDERED, this ____ day of _____, 2025.

UNITED STATES DISTRICT JUDGE

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

For the United States of America:

Dated: January 18, 2025

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

CARRIE PAGNUCCO
Chief

TAMICA H. DANIEL
Deputy Chief

s/ Abigail Bryna Marshak
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For SouthEast Bank:

Dated: January 18, 2025

s/ Christopher Willis
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[Pro Hac Vice Motions Forthcoming]