

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of Housing and Urban Development (“HUD”) (collectively the “United States”) and Franklin American Mortgage Company (“Franklin American”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Between January 2006 and December 2012, Franklin American was a Direct Endorsement Lender approved by the Federal Housing Administration (“FHA”). Franklin American has its principal place of business in Franklin, Tennessee.

B. Franklin American agrees that it engaged in the conduct set forth in Attachment A in connection with its origination, underwriting, and quality control of single-family residential mortgage loans, excluding origination or underwriting of Home Equity Conversion Mortgages under 12 U.S.C. § 1715z-20 or Streamlined Refinances under 12 U.S.C. § 1715n(a)(7), insured by the FHA on or after January 1, 2006 and that resulted in claims submitted to HUD on or before July 10, 2015 (hereafter referred to as the “Covered Conduct”). The United States contends that it has certain civil claims against Franklin American based upon the Covered Conduct.

C. This Settlement Agreement is neither an admission of liability by Franklin American nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Franklin American shall pay to the United States \$70,000,000 plus interest at a rate of 1 percent pursuant to the payment schedule set forth in Attachment B (“Settlement Amount”). The initial payment of \$10,000,000 shall be made no later than 7 days after the Effective Date of this Agreement. All payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Time is of the essence as to all payments required under Paragraph 1. In the event that Franklin American fails to pay the amount due according to Attachment B within fourteen (14) days after the date specified in Attachment B, Franklin American shall be in Default of its payment obligations (“Default”). In the event of Default, the United States will provide written notice of the Default (“Notice of Default”) to Franklin American, and Franklin American shall have an opportunity to cure the Default within thirty (30) days from the date the Notice of Default is sent by email (“Cure Period”).

Notice of Default will be delivered to Stephen G. Topetzes at Stephen.Topetzes@klgates.com. If Franklin American fails to cure the Default within the Cure Period as described in this Paragraph, the remaining unpaid balance of the Settlement Amount, including interest, shall become immediately due and payable, and Franklin American consents to a Consent Judgment in the amount of the unpaid balance plus accrued interest. After Default and expiration of the Cure Period, the United States,

at its sole option, may begin collection efforts in accordance with law and regulations. Forbearance by the United States in declaring Default, seeking a consent judgment, or executing on the judgment shall not constitute a waiver by the United States.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon Franklin American's full payment of the Settlement Amount, the United States releases Franklin American, together with its current and former parent corporations, predecessor and successor corporations, divisions, affiliates, and direct and indirect subsidiaries from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 & 24 C.F.R. §§ 28.1-28.45; or the common law theories of breach of fiduciary duty, breach of contract, payment by mistake, unjust enrichment, and fraud, or any other statutory or common law cause of action for civil damages or civil penalties that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d) in connection with the Covered Conduct.

4. Notwithstanding the release given in paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; or
- f. Any liability of individuals.

5. Franklin American has provided sworn financial disclosure statements (“Financial Statements”) to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Franklin American warrants that the Financial Statements are complete, accurate, and current as of the time they were provided. If the United States learns of asset(s) in which Franklin American had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Franklin American on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$5,000,000 or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Franklin American previously undisclosed. Franklin American agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney’s fees and expenses.

6. In the event that the United States, pursuant to Paragraph 5 (concerning disclosure of assets), above, opts to rescind this Agreement, Franklin American agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to Franklin American that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on May 14, 2013.

7. Franklin American waives and shall not assert any defenses Franklin American may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Franklin American fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Franklin American has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Franklin American in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Franklin American's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; or
- (5) the payment Franklin American makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Franklin American, and Franklin American shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Franklin American shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Franklin American or any

of its subsidiaries or affiliates from the United States. Franklin American agrees that the United States, at a minimum, shall be entitled to recoup from Franklin American any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Franklin American's books and records and to disagree with any calculations submitted by Franklin American or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Franklin American, or the effect of any such Unallowable Costs on the amount of such payments.

10. Franklin American agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Franklin American shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

11. Franklin American warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Franklin American, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that

these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Franklin American was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

12. This Agreement is intended to be for the benefit of the Parties only.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

15. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Colorado. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

17. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

18. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

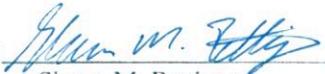
19. This Agreement is binding on Franklin American's successors, transferees, heirs, and assigns.

20. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

21. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/2/15

BY: 
Shaun M. Pettigrew
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 2 Dec 2015

BY: 
Jamie L. Mendelson
Assistant United States Attorney
District of Colorado

FRANKLIN AMERICAN MORTGAGE COMPANY

DATED: _____

BY: _____

Daniel G. Crockett
President and Chief Executive Officer
Franklin American Mortgage Company

DATED: 12-1-15

BY: 

Phillip L. Schulman
Stephen G. Topetzes
K&L Gates LLP
Counsel for Franklin American Mortgage Company

FRANKLIN AMERICAN MORTGAGE COMPANY

DATED: 12/01/15

BY: _____


Daniel G. Crockett
President and Chief Executive Officer
Franklin American Mortgage Company

DATED: _____

BY: _____

Phillip L. Schulman
Stephen G. Topetzes
K&L Gates LLP
Counsel for Franklin American Mortgage Company