

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of:

PEOPLES BANK,  
Lawrence, Kansas

A State Member Bank

Docket No. 17-041-B-SM

**CONSENT ORDER**

WHEREAS, in recognition of the common goals of the Board of Governors of the Federal Reserve System (“Board of Governors”) and Peoples Bank, Lawrence, Kansas, (“Peoples”), a state-chartered member of the Federal Reserve System, to ensure compliance by Peoples with all applicable federal and state laws, rules, and regulations including, but not limited to, section 5(a)(1) of the Federal Trade Commission Act (“FTC Act”) (15 U.S.C. § 45(a)(1)), and effective management of the legal, reputational, and compliance risks of Peoples, the Board of Governors and Peoples have mutually agreed to enter into this Consent Order (the “Order”);

WHEREAS, the Board of Governors and the Federal Reserve Bank of Kansas City (the “Reserve Bank”) have conducted an inquiry that assessed Peoples’ mortgage origination practices;

WHEREAS, this Order is issued with respect to the following:

- A. Separate and apart from its community banking operations, Peoples conducted a national mortgage business that originated residential mortgage loans. During the

origination process, Peoples' loan officers often gave prospective borrowers the option to obtain a lower interest rate on a loan by paying an amount at closing calculated as a percentage of the loan amount ("Discount Points").

- B. Borrowers regularly paid thousands of dollars for Discount Points.
- C. Peoples did not have a specific written policy regarding Discount Points.
- D. Peoples provided borrowers with several disclosures during the loan origination process that, among other things, indicated the number of Discount Points involved in the transaction and the interest rate that the borrower had purchased through those Discount Points.
- E. A borrower acting reasonably under the circumstances could have concluded based on the disclosures that the interest rate he or she was purchasing with the Discount Points was lower than what Peoples otherwise would make available to that borrower without the payment of Discount Points.
- F. Although Peoples' disclosures gave an accurate quantitative picture of the loans' costs, they mischaracterized the nature of those costs because they indicated that a specified portion of the fees paid at closing were being used to purchase a lower, discounted rate, but sometimes that was not accurate.
- G. Many borrowers who paid Discount Points did not actually receive a reduced interest rate or received a rate that was not reduced commensurate with the price paid for the Discount Points. Therefore, many borrowers did not receive a benefit or the full benefit associated with paying Discount Points.
- H. The misrepresentations in the disclosures concerning Discount Points and interest rates are material because they relate to the cost of the loan paid by the borrowers.

I. The deficiencies specified in paragraphs A. through H. above, during the period from January 1, 2011 through and including March 5, 2015 (the “Relevant Period”), resulted in deceptive acts or practices in or affecting commerce, within the meaning of section 5(a)(1) of the FTC Act (15 U.S.C. § 45(a)(1)), and unsafe or unsound banking practices.

WHEREAS, the practices described above warrant a consent order by the Board of Governors against Peoples to cease and desist and take affirmative action under sections 8(b)(1), (2), (3), and (6) of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. § 1818(b)(1), (2), (3), and (6));

WHEREAS, Peoples has agreed to this Order;

WHEREAS, on March 5, 2015, Peoples ceased the practice of charging borrowers Discount Points for which they did not receive a benefit or the full benefit associated with their purchase;

WHEREAS, the practices described in this Order were centered within Peoples’ national mortgage business line that is separate and apart from its community banking operations;

WHEREAS, Peoples has decided to terminate its national mortgage business, and the Peoples national mortgage business line has ceased taking new applications and expects all operations to cease by year-end 2017;

WHEREAS, on October 25, 2017, the board of directors of Peoples adopted a resolution authorizing Wint Winter, Jr. in his capacity as Chief Executive Officer of Peoples, to enter into this Order on behalf of Peoples and consent to compliance with each and every applicable provision of this Order by Peoples and waiving any and all rights that Peoples may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a

notice of charges on any matters set forth in this Order; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; (iv) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of the Order or any provision hereof.

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ordered, pursuant to sections 8(b)(1), (2), (3), and (6), of the FDI Act (12 U.S.C. §§ 1818(b)(1), (2), (3), and (6) and), that:

**No Misrepresentations or Omissions**

1. Peoples shall continue to take all action necessary to correct all violations of the FTC Act cited in paragraphs A through I of this Order.

2. Peoples shall refrain from making, or allowing to be made, in connection with any extension of credit, any misleading or deceptive representation, statement, or omission, expressly or by implication, including but not limited to with respect to Discount Points.

3. Peoples shall make no representations to any insured depository institution, any consumers, or any other person or entity that the Board of Governors, the Reserve Bank, or any employee, agent, or representative of the Board of Governors or the Reserve Bank have endorsed or approved any aspect of any product or service offered by Peoples.

**Restitution and Other Relief**

4. Within 10 days of this Order, Peoples shall deposit an amount of not less than \$2,800,000 into a qualified settlement fund pursuant to section 1.468B-1, et seq., of the Treasury Regulations, promulgated under section 468B of the Internal Revenue Code, or otherwise into a segregated deposit account at an insured depository institution controlled by Peoples or by a third

party on behalf of Peoples, such as a trustee or paying agent, as acceptable to the Reserve Bank (“Reserve Account”) for the purpose of providing restitution as required by this Order. Peoples, or the third party, on its behalf, shall make all restitution payments required by this Order regardless of whether the total of such payments exceeds the segregated amount required by this paragraph. No disbursements may be made out of the Reserve Account, except those made pursuant to the restitution plan submitted and not objected to by the Reserve Bank pursuant to this Order.

5. Within 45 days of this Order, Peoples shall submit to the Reserve Bank, for a non-objection, a written plan to provide for restitution and remediation in connection with this Order (the “Restitution Plan”).

6. The Restitution Plan shall require Peoples to make restitution to each borrower who, in the course of obtaining a mortgage loan with Peoples, paid Unearned Discount Points during the Relevant Period (“Eligible Consumers”). For purposes of this Order, a borrower paid Unearned Discount Points where, according to Peoples’ customer-specific pricing generated by the Peoples’ internal pricing system, the interest rate Peoples provided to the borrower who paid the Discount Points was available (a) without the payment of any Discount Points; or (b) for fewer Discount Points than the consumer paid (in which case, the additional Discount Points that were not necessary for the consumer to obtain the interest rate provided are Unearned Discount Points).

7. Restitution to each Eligible Consumer shall be in the dollar amount that the consumer paid for the Unearned Discount Points (“Restitution Amount”). Where Peoples lacks data to determine whether and to what extent a borrower paid Unearned Discount Points, Peoples shall pay as restitution to each such borrower the total dollar amount the borrower paid for

discount points multiplied by the ratio of total Unearned Discount Points at the Peoples branch that originated the borrower's loan in the twelve months following the origination to total Discount Points paid at such branch in the twelve months following the origination.

8. For Eligible Consumers with an open deposit account at Peoples, the Restitution Plan shall require Peoples to make restitution by crediting such account in the Restitution Amount by no later than 30 days from the Reserve Bank's non-objection to the Restitution Plan. For Eligible Consumers who do not maintain an open deposit account at Peoples, Peoples shall make restitution by check in the Restitution Amount by no later than 30 days from the Reserve Bank's non-objection to the Restitution Plan.

9. In addition, the Restitution Plan shall address, consider, and include:

(a) a description of the process that Peoples will use to calculate restitution for each Eligible Consumer. At a minimum, such description shall specify: (i) the data fields involved in the calculation; (ii) how Peoples will use those data to calculate the restitution amount; (iii) each Eligible Consumer's name and unique loan identification number; and (iv) the Restitution Amount due to each Eligible Consumer per the requirements of paragraphs 6 and 7 of this Order.

(b) Proposed text of the following items: letters or notices that will be sent to Eligible Consumers entitled to restitution by check; letters or notices that will be sent to Eligible Consumers entitled to restitution by credit to an account; and envelopes in which the restitution checks will be enclosed. The text of the letters to Eligible Consumers shall include: satisfactory language explaining the reasons that Peoples is crediting the account or sending a restitution check; a reference to the web address for any press release by the Board of Governors related to this Order; and a statement that the restitution payment

does not, in any manner, limit a consumer's rights. The face of each restitution check shall clearly and conspicuously state the number of days within which the Eligible Consumer must cash the check, which may not be less than 90 days.

10. Within 30 days after receipt of the Reserve Bank's written non-objection of the Restitution Plan, the restitution described in paragraphs 6 and 7 shall be made and the letters, including the notices, checks, and envelopes described in paragraph 9(b) shall be sent to the Eligible Consumers without modifications. Letters and any checks are to be sent by United States Postal Service first-class mail, address correction service requested, to each Eligible Consumer's last known address reflected in Peoples' records or the most recent address provided by the National Change of Address System. The envelopes shall contain only the materials to which the Reserve Bank has provided a non-objection. Peoples shall make reasonable attempts to locate Eligible Consumers or their estates, (as further defined in the Restitution Plan), including a standard address search using the National Change of Address System, or other similar system, if the notification letter and/or restitution check is returned for any reason. Peoples shall promptly re-mail all returned letters and restitution checks to corrected addresses.

11. No earlier than 90 days from the date the restitution checks were originally mailed ("Void Date"), Peoples may void all checks that were returned or have not been negotiated, provided Peoples includes a mechanism in the Restitution Plan by which Eligible Consumers can obtain a restitution payment for a period of 360 days from the date the restitution check was originally mailed.

12. The total amount of any restitution payments that had been made by checks that were voided and that were not cashed or deposited by Eligible Consumers, and the total amount

of any interest or other payments earned on the Reserve Account shall be distributed to the United States Treasury.

13. Once the Board of Governors determines that all required restitution obligations described in paragraphs 4 through 12 of this Order have been satisfied and the Board of Governors issues the appropriate non-objection, Peoples may close the Reserve Account and remit to Peoples any excess funds remaining therein.

### **Independent Third-Party Auditor**

14. Within 45 days of the date of this Order, Peoples shall hire an independent auditor who is acceptable to the Reserve Bank, who shall verify that Peoples made restitution as directed by this Order following non-objection by the Reserve Bank. The independent auditor shall prepare a final written report (“Final Report”) evaluating the processes and procedures by which Peoples made the restitution, including the amounts of all restitution credits and refunds required by this Order. The Restitution Plan shall contain a date by which the independent auditor’s Final Report shall be submitted to the Reserve Bank for non-objection. Prior to delivery of the Final Report, the Reserve Bank may require the independent auditor to produce interim reports or other updates related to the progress of the Restitution Plan. All reports by the independent auditor shall be submitted simultaneously to Peoples and the Reserve Bank.

### **Approval, Implementation, and Progress Reports**

15. Peoples shall submit the Restitution Plan that is acceptable to the Reserve Bank within the applicable time period set forth in this Order.

16. Unless otherwise provided above, within 10 days of approval by the Reserve Bank, Peoples’ board of directors shall adopt the Restitution Plan. Upon adoption, Peoples shall promptly implement the Restitution Plan, and thereafter fully comply with it.



17. During the term of this Order, the Restitution Plan shall not be amended or rescinded without the prior written approval of the Reserve Bank.

18. Within 45 days after the end of each calendar quarter following the date of this Order, Peoples' board of directors shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The Reserve Bank may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

### **Notices**

19. All communications regarding this Order shall be sent to:

- (a) Richard M. Ashton  
Deputy General Counsel  
Board of Governors of the Federal Reserve System  
20th & C Streets, N.W.  
Washington, D.C. 20551
- (b) Michael Steckline  
Vice President  
Federal Reserve Bank of Kansas City  
1 Memorial Drive  
Kansas City, Missouri 64198
- (c) Wint Winter, Jr.  
Chief Executive Officer  
Peoples Bank  
4831 West 6th Street  
Lawrence, Kansas 66049

With a copy to:

- (d) Jeffrey Naimon  
Partner  
Buckley Sandler LLP  
1250 24th Street, NW, Suite 700  
Washington, D.C. 20037

## **Miscellaneous**

20. Notwithstanding any provision of this Order to the contrary, the Reserve Bank may, in its discretion, grant written extensions of time to Peoples to comply with any provision of this Order.

21. The provisions of this Order shall be binding upon Peoples, its institution-affiliated parties, in their capacities as such, and Peoples' successors and assigns.

22. Each provision of this Order shall remain effective and enforceable until stayed, modified, or terminated, or suspended in writing by the Reserve Bank.

23. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any further or other action affecting Peoples, or any of its current or former institution-affiliated parties or its successors or assigns, or any other of Peoples' subsidiaries; however, neither the Board of Governors nor the Reserve Bank shall take any further action against Peoples or its successors or assigns, based upon the conduct described in the WHEREAS clauses of this Order to the extent known by the Board of Governors as of the effective date of this Order. This release and discharge shall not preclude or affect: (i) any right of the Board of Governors to determine and ensure compliance with this Order; (ii) any proceedings brought by the Board of Governors to enforce the terms of this Order; or (iii) any proceedings brought by the Board of Governors against individuals or entities who are or were institution-affiliated parties of Peoples.

24. Nothing in this Order, expressed or implied, shall give to any person or entity, other than the parties hereto and their successors hereunder, any legal or equitable right, remedy, or claim under this Order.

By Order of the Board of Governors of the Federal Reserve System effective this 28th day of November 2017.

PEOPLES BANK

BOARD OF GOVERNORS  
OF THE FEDERAL RESERVE SYSTEM

By: \_\_\_\_\_/s/\_\_\_\_\_  
Wint Winter, Jr.  
Chief Executive Officer

By: \_\_\_\_\_/s/\_\_\_\_\_  
Ann E. Misback  
Secretary of the Board