UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Fair Housing Act

CONCILIATION AGREEMENT

Between

Assistant Secretary for Fair Housing and Equal Opportunity

U.S. Department of Housing and Urban Development

(Complainant)

and

MortgageIT, Inc.

(Respondent)

FHEO CASE NUMBER: 00-09-0001-8

I. PARTIES

Complainant

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 5200
Washington, DC 20410

Respondent

MortgageIT, Inc.
33 Maiden Lane, Sixth Floor
New York, NY 10038

II. STATEMENT OF POSITIONS

A. Complainant's Position:

The U.S. Department of Housing and Urban Development (HUD or the Department) investigates complaints of housing discrimination under the Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988 (the Act). Section 810 of the Act authorizes the Secretary of HUD to initiate investigations of alleged housing discrimination, including lending discrimination. HUD conducted an analysis of MortgageIT, Inc.'s Home Mortgage Disclosure Act (HMDA) data and evaluated other information about the company before opening a Secretary-initiated investigation of the company's lending practices. The results of HUD's investigation led to the filing of a Secretary-initiated complaint involving MortgageIT, Inc.'s lending practice of charging African-American and Hispanic home loan borrowers higher Annual Percentage Rates (APRs) and higher fees than similarly-situated white[1] home loan borrowers. In addition, the complaint alleges that MortgageIT, Inc. (MortgageIT) denied home loan applications from African-American and Hispanic loan applicants at higher rates than similarly-situated white loan applicants.

HUD conducted a thorough investigation of the allegations raised in the Secretary-initiated complaint. HUD obtained and reviewed written documentation about MortgageIT's business structure and lending operation. HUD interviewed brokers and several MortgageIT employees with knowledge of the company's lending policies and practices, including employees with these job functions: loan officer, operations, product development, government lending, customer service, sales, and underwriter.

[1] White refers to non-Hispanic white.

MortgageIT was headquartered in New York City and incorporated in the State of New York on February 22, 1999. MortgageIT operated its lending business as a full-service residential mortgage banking company that originated wholesale residential mortgage loans in all 50 states. MortgageIT offered the traditional services of a home mortgage lending institution, including the extension of credit for and financing of residential housing loans. MortgageIT was an approved Federal Housing Administration (FHA) direct endorsement lender from 1999 to 2009. MortgageIT's lending operation included the underwriting and approval of home loan mortgages through its wholesale channel, which included approximately 9,000 different mortgage brokers. Mortgage brokers who supplied MortgageIT with wholesale loans were compensated in two ways: through direct fees paid by borrowers to brokers, and/or through yield spread premiums paid by MortgageIT to brokers. The loans underwritten and approved through MortgageIT's wholesale channel resulted in pricing and denial disparities on the basis of race and national origin. MortgageIT was in a position to monitor pricing and denial disparities. In addition, MortgageIT could have placed appropriate limits on the fees charged to borrowers.

Deutsche Bank AG is a German bank with a branch in New York, NY. DB Structured Products, Inc. (DBSP) and Deutsche Bank Securities Inc. (DBSI) are wholly-owned subsidiaries of Deutsche Bank AG with their principal places of business in New York City. Deutsche Bank AG, DBSP, and DBSI collectively shall be referred to as Deutsche Bank.

In 2004, MortgageIT became a wholly owned subsidiary of MortgageIT Holdings, Inc., a self-administered REIT trading on the NYSE. In January 2007, MortgageIT became a wholly-owned, indirect subsidiary of DBSP and DBAG. After the acquisition, MortgageIT continued its lending operation of underwriting and approving mortgages through its wholesale channel, but its securitization operation moved to Deutsche Bank. MortgageIT employees that handled the securitization aspects of the lending operation became Deutsche Bank employees after the acquisition. As Deutsche Bank employees, they handled the securitization of MortgageIT's loans in 2007. On December 10, 2008, MortgageIT ceased its lending operation.

The loans underwritten and approved by MortgageIT included loans insured by the FHA loan program. The FHA loan program requires that FHA approved lenders comply with FHA loan program regulations and the Fair Housing Act. After MortgageIT became a subsidiary, Deutsche Bank was in a position to know that the operations of MortgageIT did not conform fully to all of HUD-FHA's regulations, policies, and handbooks; that one or more of the annual certifications was signed by an individual who was also an officer of a Deutsche Bank entity; and that, contrary to the representations in MortgageIT's annual certifications, MortgageIT did not conform to all applicable HUD-FHA regulations.

MortgageIT operated its lending business to underwrite, approve, purchase, and securitize mortgage loans in a manner that allowed pricing disparities and denial disparities on the basis of race and national origin. MortgageIT's underwriters conducted all the underwriting for loans within MortgageIT's wholesale channel. Those underwriters denied loan applications from African-American and Hispanic applicants at higher rates than similarly-situated white loan applicants. Its underwriters approved loans that charged African-Americans and Hispanics higher APRs and fees than similarly-situated white borrowers. MortgageIT and Deutsche Bank then securitized some of those loans that had been approved by MortgageIT's underwriters.

HUD reviewed MortgageIT loan files for both pricing and denial disparities. HUD's review of MortgageIT's loan files supported the results discussed below of HUD's analysis of MortgageIT's 2007 and 2008 internal loan data, revealing disparities in denial rates and pricing that could not be explained by factors other than race and national origin.

HUD's analysis of MortgageIT's 2007 and 2008 internal loan data, which include the key underwriting factors, showed statistically and economically significant disparities in APR. Specifically, African-American and Hispanic borrowers paid 8 and 10 basis points higher respectively in APR than similarly-situated white borrowers. Moreover, HUD's analysis of MortgageIT's 2007 and 2008 internal loan data also showed that African-American and Hispanic borrowers were much more likely to be charged the highest APRs. For example, African Americans and Hispanics were respectively 65% and 72% more likely to receive higher priced loans, as defined by the post-2009 definition of higher priced loans set forth in Regulation Z,[2] compared to similarly-situated white borrowers.

HUD's analysis of MortgageIT's 2007 and 2008 internal loan data showed significant fee disparities. African-American and Hispanic borrowers paid on average $707 and $906 more in fees than similarly-situated white borrowers. Moreover, African-American and Hispanic borrowers paid $5,000 or more in excess fees when compared to similarly-situated white borrowers 9% and 15% of the time, respectively.

HUD's analysis of MortgageIT's 2007 and 2008 internal loan data showed statistically and economically significant disparities in denial of loan applications on the basis of race and national origin. Between January 2007 and June 2008, MortgageIT's loan operation resulted in African-American loan applicants being 45% more likely to be denied than similarly-situated white applicants. During the same time period, MortgageIT's loan operation resulted in Hispanic loan applicants being 35% more likely to be denied than similarly-situated white applicants.

MortgageIT's lending practices included: 1) denying loans to qualified minority applicants, 2) allowing higher APRs to African-American and Hispanic borrowers than to similarly-situated white borrowers, and 3) allowing loans with less favorable fees to African-American and Hispanic borrowers than to similarly-situated white borrowers. If proven, these allegations would violate subsections 804(a), 804(b), and 805 of the Fair Housing Act.

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[2] The post-2009 definition of high-cost loans or "higher-priced mortgage loans" means mortgages with an APR 1.5 percentage points or more above the "average prime offer rate." See 12 C.F.R. §1026.35. The pre-2009 definition of "higher-priced mortgage loans" referenced Treasury bond rates, which did not necessarily reflect prevailing mortgage rates.

B. Respondent's Position:

MortgageIT denies the matters alleged by the Department, and states that it has treated loan applicants fairly and without regard to impermissible factors, such as race or ethnicity. MortgageIT has been, at all times, firmly committed to the principles of fair lending, fair housing, and equal opportunity. MortgageIT conducted its own analysis of loan data and loan file information and concluded that there were no material disparities across borrower groups in the pricing or underwriting of loans.

MortgageIT notes that it has not been advised by the Department of any allegation that any employee of MortgageIT discriminated intentionally on the basis of race or national origin.

The Department's pricing claims focus on wholesale loans and arise from the fees that independent mortgage brokers charged their customers. These fees were neither set by nor payable to MortgageIT. MortgageIT operated its business overwhelmingly through third-party mortgage brokers. As independent entities, the mortgage brokers were free to negotiate their fees with borrowers, within certain limits imposed by MortgageIT. There is no evidence that any of those brokers engaged in discriminatory practices or that MortgageIT was aware of any such discriminatory practices.

MortgageIT's analysis of its 2007 and 2008 loan data and loan file information revealed legitimate, nondiscriminatory reasons that explained why loans were denied.

Throughout MortgageIT's origination operations, it established rates and fees appropriately, and did not unlawfully discriminate against any person based on race, ethnicity, or otherwise. Throughout the period during which the alleged discrimination occurred, MortgageIT maintained policies and procedures that were consistent with standard industry fair lending compliance practices.

Without admitting any wrongdoing, and in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to this matter, MortgageIT agrees to settle the claims presented by the Department by entering into this Agreement.

III. TERM OF AGREEMENT

This Conciliation Agreement (Agreement) shall govern the conduct of Complainant and Respondent (Parties) for a period of three (3) years from the effective date of this Agreement (Term), unless HUD determines that an extension is necessary to complete the actions mandated by the Agreement. The time frames specified in this Agreement are composed of calendar days.

IV. EFFECTIVE DATE

Upon approval by the Department, this Agreement shall constitute a binding contract under state and federal law and a Conciliation Agreement pursuant to the Act. This Agreement shall be approved by the Department and become effective on the date on which it is signed by the Director for the Office of Systemic Investigations, HUD's Office of Fair Housing and Equal Opportunity (FHEO).

V. GENERAL PROVISIONS

1. The Parties acknowledge that this Agreement is a voluntary and full settlement of the Complaint. The Parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

2. Respondent acknowledges that the Act makes it unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Respondent further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act.

3. This Agreement is binding upon the Respondent, its employees, heirs, successors and assigns and all others in active concert with it in the ownership or operation of Respondent's enterprises.

4. Pursuant to 42 U.S.C. § 3610(b)(4), this Agreement is a public document.

5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint or matter involving Respondent made under the Act or any other matter within the Department's jurisdiction.

6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all Parties agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved, in writing by FHEO's Director for the Office of Systemic Investigations.

7. The Parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the separate executed signature pages attached to the body of the Agreement constitute one document.

8. Respondent hereby forever waives, releases, and covenants not to sue the Department or the Complainant, their agents, employees, attorneys, officers, assignees, and successors in interest with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the allegations presented in HUD Case Number 00-09-0001-8, relating to Respondent's mortgage pricing and mortgage application denials from January 1, 2007 until December 31, 2008.

9. In exchange for Respondent's performance of the provisions of the Agreement, Complainant hereby forever waives, releases, and covenants not to sue Respondent and its current and former shareholders, parents, subsidiaries, affiliates, partners, directors, insurers,

agents, employees, attorneys, officers, assignees, and successors in interest with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the allegations presented in HUD Case Number 00-09-0001-8 relating to Respondent's mortgage pricing and mortgage application denials from January 1, 2007 until December 31, 2008.

10. It is understood that the Agreement does not constitute an admission by Respondent or any other party of any violation of the Act or any other federal statute or regulation, nor does the Agreement constitute evidence of a determination by the Department of any violation of the Act or other federal statute or regulation.

11. MortgageIT represents that it has terminated its mortgage operation, with the exception of activities incidental to existing contractual obligations on loans previously originated, such as possible repurchases and indemnifications. In the event that MortgageIT reenters the mortgage business, including servicing or underwriting mortgages, MortgageIT shall notify HUD's Director for the Office of Systemic Investigations at the earlier of sixty (60) days before it intends to reenter this line of business or the time that it notifies its federal regulators of MortgageIT's intent to reenter this line of business. MortgageIT shall also implement policies, practices, and monitoring designed to prevent and detect potential fair lending violations in their mortgage business, and shall provide the Department with the details of these policies, practices, and monitoring forty-five (45) days prior to implementing such reentry. The Department shall have sixty (60) days to review, and agree or object to the proposed policies.

VI. GENERAL NON-DISCRIMINATION REQUIREMENTS

1. Respondent, including all of its officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with it, is hereby enjoined from engaging in any act or practice that discriminates on the basis of race, color, or national origin in any aspect of a residential real estate-related transaction in violation of the Act.

VII. RELIEF IN THE PUBLIC INTEREST

1. MortgageIT agrees to comply with the fair lending requirements of the Fair Housing Act, as amended (42 U.S.C. §§ 3600-3619).

2. MortgageIT will deposit in an interest-bearing escrow account (the Compensation Fund) the total sum of Twelve Million One Hundred Twenty-Two Thousand Five Hundred Thirty-Seven Dollars ($12,122,537) to compensate for the full monetary damages suffered by aggrieved persons nationwide who obtained a mortgage or were denied a mortgage as a result of the alleged violations of the Fair Housing Act. Title to this account will specify that it is "for the benefit of allegedly aggrieved persons pursuant to the Conciliation Agreement in Assistant Secretary for Fair Housing and Equal Opportunity v. MortgageIT." At the time of execution of this Conciliation Agreement, Deutsche Bank shall provide documentation to HUD that sufficiently shows that MortgageIT can fully fund the Compensation Fund and pay the Administrator expenses. MortgageIT will deposit in an interest-bearing escrow account the sum of money reasonably estimated to be sufficient to pay the Administrator expenses. Title to this account

will specify that it is "for Administrator expenses pursuant to the Conciliation Agreement in Assistant Secretary for Fair Housing and Equal Opportunity v. MortgageIT." MortgageIT will provide written verification of the deposit to HUD within five (5) business days of the Effective Date of the Conciliation Agreement. Any interest that accrues will become part of the Compensation Fund and be used and disposed of as set forth herein.

3. HUD will use information and data obtained from MortgageIT for the law enforcement purposes of implementing this Conciliation Agreement. HUD will be allowed access to data, mortgage application files, mortgage loan files, and borrower contact information for applications MortgageIT received and/or loans MortgageIT funded on or after January 1, 2007 to verify the accuracy of the data provided and to otherwise identify persons entitled to the payments from the Compensation Fund. MortgageIT will cooperate in providing such information to HUD. Cooperation shall include allowing access to reasonably available servicing records and other reasonably available records of MortgageIT, MortgageIT's parent, or any entity that MortgageIT or MortgageIT's parent has a legal, contractual, or other ability to direct in this regard.

4. Within ninety (90) days of the Effective Date of this Conciliation Agreement, MortgageIT will enter into a contract retaining a Compensation Fund Administrator (Administrator), subject to approval by HUD, which shall not be unreasonably withheld, to conduct the activities set forth in the Agreement. MortgageIT will bear all costs and expenses of the Administrator, and MortgageIT's contract with the Administrator will require that the Administrator comply with the provisions of the Conciliation Agreement as applicable to the Administrator. The Administrator's contract will require the Administrator to work cooperatively with HUD in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to HUD. MortgageIT will allow the Administrator access to mortgage data, application files, loan files, and borrower contact information for applications MortgageIT received and/or loans MortgageIT funded on or after January 1, 2007 to verify the accuracy of the data provided and to otherwise identify persons entitled to the payments from the Compensation Fund. MortgageIT will cooperate in providing such information to the Administrator. Cooperation shall include allowing access to reasonably available servicing records and other reasonably available records of MortgageIT, MortgageIT's parent, or any entity that MortgageIT or MortgageIT's parent has a legal, contractual, or other ability to direct in this regard. The Administrator's contract will require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator. In the event that HUD or MortgageIT believe that the Administrator is not materially complying with the terms of its contract with MortgageIT, HUD and MortgageIT will meet and confer for the purpose of mutually agreeing upon a course of action to effect the Administrator's material compliance with its contract with MortgageIT. In the event that HUD and MortgageIT are unable to agree upon a course of action HUD shall be permitted to instruct the Administrator in respect of such course of action and MortgageIT will have the right to challenge such instruction in court.

5. HUD will identify allegedly aggrieved persons and provide a list of such persons to MortgageIT and the Administrator. The Administrator's contract will require the Administrator to make its best efforts, using all reasonable methods, to locate each identified allegedly

aggrieved person and obtain such information as HUD reasonably considers necessary. The Administrator's contract will require the Administrator to complete this responsibility within nine (9) months from the date HUD provides the list allegedly aggrieved persons, subject to an extension of time as provided by HUD upon the Administrator's reasonable request. The Administrator's contract will require the Administrator, as part of its operation, to establish a cost-free means for allegedly aggrieved persons to contact it, including email and a toll-free telephone number.

6. HUD will specify the amount each allegedly aggrieved person identified in the list described in Paragraph 5 and located by the Administrator will receive from the Compensation Fund no later than ninety (90) days after the Administrator's deadline for the completion of locating aggrieved persons in Paragraph 5 has passed. HUD will provide the list of compensation amounts for each allegedly aggrieved person to the Administrator.

7. The Administrator's contract will require the Administrator to send releases, with language approved by HUD and MortgageIT as set forth in Appendix A, to allegedly aggrieved persons. Payments from the Compensation Fund to an allegedly aggrieved person will be subject to the execution and delivery to MortgageIT of the person's release. After receipt of executed releases, the Administrator will promptly deliver payments to those persons in amounts determined by HUD as described in Paragraph 6. The Administrator's location of allegedly aggrieved persons and payment responsibilities may take place on a rolling basis with approval from HUD.

8. Any funds remaining in the Compensation Fund after payments have been made to aggrieved persons will be distributed to qualified organization(s) that provide services including credit and housing counseling (including assistance in obtaining loan modification and preventing foreclosure), financial literacy, and other related programs targeted at African-American and Hispanic potential, current, and former homeowners in communities identified by HUD. HUD shall determine when all aggrieved persons have been compensated so that the remaining money may be distributed to such organizations. Recipient(s) of such funds must not be related to MortgageIT, MortgageIT's parent, or any entity owned by MortgageIT's parent. MortgageIT will consult with and obtain the non-objection of HUD in selecting recipient(s) of these funds and the amount to be distributed to each. MortgageIT will require each recipient to submit to MortgageIT and HUD a detailed report on how fund are used within one (1) year after the funds are distributed.

9. MortgageIT will not be entitled to a set-off, or any other reduction, of the amount of payment to allegedly aggrieved persons because of any debts owed by the identified persons. MortgageIT shall make the payments determined by HUD without regard to whether the aggrieved person has previously signed a release of legal claims or obtained a loan modification.

VIII. EVALUATING AND MONITORING COMPLIANCE

1. For the duration of this Agreement, Respondent shall retain all records relating to its obligations hereunder, including its residential lending activities as well as any compliance activities required by this Agreement. The Department shall have the right to review and copy such records upon request.

2. Respondent shall provide to HUD's Office of Systemic Investigations the data it submits, if any, to the Federal Financial Institutions Examination Council (FFIEC) pursuant to the Home Mortgage Disclosure Act and the Community Reinvestment Act. The data will be provided in the same format in which it is presented to the FFIEC within thirty (30) days of its submission to the FFIEC each year for the duration of this Agreement.

3. In the event that MortgageIT notifies HUD pursuant to paragraph 11 of section V General Provisions in this Agreement that it will reenter the mortgage business, MortgageIT shall make an annual report to the HUD's Office of Systemic Investigations on its progress in fulfilling the goals of this Agreement. Each such report shall provide a complete account of MortgageIT's actions to comply with the requirements of the Fair Housing Act and each requirement of this Agreement during the previous year, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component fell short of meeting its goal for that year, and any recommendations for additional actions to achieve the goals of this Agreement or the Fair Housing Act. MortgageIT shall submit this report each year for the term of this Agreement on the anniversary of the date of the entry of this Agreement.

4. Respondent shall send all communications and provide all required documentation of compliance with the provisions of this Agreement to:

Joel D. Armstrong
Director for the Office of Systemic Investigations
U.S. Department of Housing and Urban Development
451 7th St SW, Room 5234
Washington, DC 20410

And the Department shall send all communications to Respondent:

Joe Salama
Director and Senior Counsel, Litigation and Regulatory Investigations
Deutsche Bank AG, New York
60 Wall Street
New York, NY 10005-2836

IX. ADMINISTRATION

1. Modifications to this Agreement may be made only upon approval of the Department, as provided in Article V, above. The Parties recognize that there may be changes in relevant and material circumstances during the term of this Agreement which may impact compliance with this Agreement. The Parties agree to work cooperatively to discuss and attempt to agree upon any modifications to this Agreement required due to changed circumstances.

2. The Parties to the Agreement will endeavor in good faith to resolve any differences regarding the interpretation of, or compliance with, this Agreement. In the event of Respondent's failure to comply with this Agreement, the Department may pursue judicial enforcement of this Agreement, as provided in 42 U.S.C. §§ 3610 (c), 3614(b)(2), including the imposition of any remedy authorized by law or equity including attorneys' fees and costs.

3. Each Party to this Agreement shall bear its own costs and attorney's fees associated with reaching this conciliation.

X. SIGNATURES

For Complainant:

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 5200
Washington, DC 20410

9/30/2013
Date

For Respondent:

MortgageIT, Inc.
60 Wall Street
New York, NY 10005-2836

9/30/13
Date

MortgageIT, Inc.
60 Wall Street
New York, NY 10005-2836

9/30/13
Date

Melanie Brody

9-30-13

Date

Melanie Brody
K&L Gates
1601 K Street NW
Washington, DC 20006-1600
Phone: (202) 778.9203
Fax: (202) 778.9100

XI. APPROVAL

Joel D. Armstrong
Director
Office of Systemic Investigations
U.S. Department of Housing and Urban Development

September 30, 2013
Date

APPENDIX A

Release

In consideration for the parties' agreement to the terms of this Conciliation Agreement reached in Assistant Secretary for Fair Housing and Equal Opportunity v. MortgageIT, HUD No. 00-09-001-8, and MortgageIT's payment to me of $________________, pursuant to the Conciliation Agreement, I hereby release and forever discharge all claims, rights, remedies and recoveries related to the facts of housing and credit discrimination in the above-referenced HUD complaint in connection with my residential mortgage transaction, 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 that I may have against MortgageIT, 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