

**SETTLEMENT AGREEMENT AND ORDER  
AMERISAVE MORTGAGE CORPORATION**

**WHEREAS**, Amerisave Mortgage Corporation (hereinafter “Amerisave”) is a corporation licensed as a mortgage broker or lender under the laws of the various state mortgage regulators;

**WHEREAS**, Amerisave maintains its corporate headquarters at 3350 Peachtree Road, N.E., Suite 1000, Atlanta, Georgia, which is its principal place of business;

**WHEREAS**, the states of Alaska, Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia (hereinafter referred to as “the Participating States”) have agreed, through their respective regulatory agencies, to negotiate and enter into this Settlement Agreement and Order (hereinafter referred to as the “Agreement”);

**WHEREAS**, the Alaska Department of Commerce, Community, and Economic Development; the Arizona Department of Financial Institutions; the California Department of Financial Institutions; the Connecticut Department of Banking; the Georgia Department of Banking and Finance; the Hawaii Division of Financial Institutions; the Illinois Department of Financial and Professional Regulation; the Indiana Office of the Secretary of State Securities Division; the Idaho Department of Finance; the Iowa Division of Banking; the Kentucky Department of Financial Institutions; the Louisiana Office of Financial Institutions; the Maryland Department of Financial Regulation; the Massachusetts Division of Banks; the Mississippi Department of Banking; the Missouri Department of Insurance, Financial

Institutions and Professional Registration; the Montana Division of Banking and Financial Institutions; the Nebraska Department of Banking and Finance; the New Jersey Department of Banking and Insurance; the New Mexico Regulation and Licensing Department; the New York Department of Financial Institutions; the North Carolina Office of the Commissioner of Banks; the Ohio Department of Commerce, Division of Financial Institutions; the Oregon Division of Finance & Corporate Securities; the Pennsylvania Department of Banking and Securities; the South Carolina Department of Consumer Affairs; the South Dakota Division of Banking; the Tennessee Department of Financial Institutions; the Vermont Department of Financial Regulation; the Virginia State Corporation Commission; the Washington Department of Financial Institutions; the West Virginia Division of Financial Institutions; the Wyoming Division of Banking; and, the District of Columbia Department of Insurance, Securities, and Banking (hereinafter referred to as the "State Mortgage Regulators") are members of the Conference of State Bank Supervisors ("CSBS") and have agreed to address enforcement concerns with Amerisave in a coordinated manner, working through its Multi-State Mortgage Committee in the interest of economy of time and resources for its members and Amerisave;

**WHEREAS**, Amerisave and the State Mortgage Regulators are collectively referred to as the "Parties";

**WHEREAS**, Amerisave acknowledges that it has full knowledge of its rights to notice and hearing pursuant to the laws of the Participating States;

**WHEREAS**, Amerisave enters into this Agreement solely for the purpose of resolving disputes with the State Mortgage Regulators in their entirety and without admitting any allegations or implications of fact, and without admitting any violation of laws, regulations or rules governing the conduct and operation of its mortgage lending business in each Participating

State;

**WHEREAS**, on July 19, 2010, the State Mortgage Regulators commenced a Multi-State Examination of Amerisave, covering the period of April 1, 2008 to March 31, 2010, the scope of which was to review Amerisave's financial safety and soundness, adequacy of management controls and operations and compliance with applicable laws and regulations;

**WHEREAS**, the State Mortgage Regulators conducted that Multi-State Examination pursuant to their respective statutory authorities, and according to the protocols established by the CSBS/AARMR Nationwide Cooperative Protocol for Mortgage Supervision and the Nationwide Cooperative Agreement for Mortgage Supervision dated January 15, 2008;

**WHEREAS**, a report of the Multi-State Examination was subsequently issued;

**WHEREAS**, the State Mortgage Regulators reserved from the Multi-State Examination any issue not addressed in the Multi-State Examination Report, notably the issue of unlicensed loan origination and unlicensed branch offices;

**WHEREAS**, the State Mortgage Regulators conducted a follow-up investigation of the activities of Amerisave's unlicensed employees and unlicensed branch offices;

**WHEREAS**, Amerisave cooperated with the State Mortgage Regulators during the course of the follow-up investigation by voluntarily providing documents, recordings, employee lists, loan lists, and other responses to inquiries;

**WHEREAS**, as of March 31, 2010, Amerisave had, in addition to its principal office in Atlanta, Georgia, seven (7) licensed branches in the states of Arizona, Maryland, Nevada, Ohio, Pennsylvania and Tennessee. Each branch office held one (1) license in the state in which the branch office was located; and

**WHEREAS**, at the time of this Agreement, Amerisave has, in addition to its principal

office in Atlanta, Georgia, five (5) single-licensed branches in each of the states of Arizona, California, Hawaii, Ohio and Nevada.

### **THE STATE MORTGAGE REGULATORS' CONTENTIONS**

**WHEREAS**, based on its investigation, the State Mortgage Regulators contend, as a general matter, that certain unlicensed Amerisave employees, including but not limited to, employees with the title of Senior Mortgage Processor (“SMP”), engaged in mortgage loan origination activities for which a mortgage loan originator (“MLO”) license was required by one or more Participating States;

**WHEREAS**, based on its investigation, the State Mortgage Regulators specifically contend that certain unlicensed Amerisave employees engaged in mortgage loan origination activities, in states where such activities required a license, by: 1) soliciting potential borrowers by telephone using leads generated by third parties that were purchased by Amerisave; 2) verbally obtaining from potential borrowers certain financial information that Amerisave relied upon in making tentative credit decisions; 3) analyzing that financial information for the purpose of discussing mortgage options with potential borrowers and to generate “personalized rate sheets” for potential borrowers; 4) sending these “personalized rate sheets” to borrowers via e-mail; 5) discussing with potential borrowers possible rates, terms, and conditions of residential loans, including numerous topics requiring a license; and/or 6) advertising on websites, on business cards, and as attachments to e-mails that these unlicensed employees were qualified to answer questions from potential borrowers about Amerisave loans;

**WHEREAS**, the State Mortgage Regulators contend that certain unlicensed Amerisave employees engaged in certain mortgage loan activities without requisite supervision, direction and instruction by a licensed MLO and that a licensed MLO did not always assign, authorize

and monitor the performance of clerical and support duties by Amerisave loan processors as required by the SAFE Act, 12 U.S.C. §§ 5101-5116 (hereinafter the “SAFE Act”), and its regulations, 12 CFR Part 1007 and 1008, Appendix C to Part 1008, and the corresponding enabling statutes in each of the Participating States; and

**WHEREAS**, the State Mortgage Regulators contend that certain unlicensed Amerisave employees engaged in the mortgage loan business from locations that were not licensed as branches in those Participating States that require branch licenses;

### **AMERISAVE’S CONTENTIONS**

**WHEREAS**, Amerisave contends, as a general matter, that Amerisave and its employees, including its unlicensed employees, intended to comply with state licensing laws at all times, including those laws governing MLO and branch licenses, and admit no wrongdoing; and

**WHEREAS**, Amerisave contends that certain state laws applicable to the licensing of MLOs and branch offices are vague, subject to multiple interpretations, and inconsistent from state to state;

**WHEREAS**, Amerisave contends that the activities of its unlicensed employees and loan processors were designed to be compliant with the SAFE Act, its regulations, the corresponding enabling statutes in each of the Participating States, and admits no wrongdoing; and

**NOW, THEREFORE**, having negotiated this Agreement in order to resolve their contrary contentions and disputes without incurring the costs, inconvenience and delays associated with protracted administrative proceedings and possible judicial review, the Parties hereby enter into this Agreement to resolve, by mutual agreement, the issues identified above.

## COMPLIANCE MEASURES

1. Amerisave agrees that it will require any of its employees who engage in mortgage loan origination to take the necessary examinations, obtain the necessary education, and apply for the necessary mortgage origination licenses prior to engaging in any activities requiring a MLO license.

2. Amerisave agrees that it will not allow any employee to originate residential mortgage loans for Amerisave in any state in which that person is not licensed to originate residential mortgage loans.

3. Amerisave agrees that its unlicensed employees will engage in residential mortgage loan activities only to the extent such activities do not require a license under the statutes and regulations of the Participating States, and that they will be supervised, instructed, and directed by licensed MLOs, to the extent such supervision, instruction, and direction is required by applicable law.

4. Amerisave agrees that it will apply for and hold branch licenses for any locations for which the applicable Participating States require such a license.

5. Amerisave agrees that its corporate policies, procedures and controls will strictly adhere to the SAFE Act and its regulations and to the laws of each of the Participating States, to the extent those laws are applicable.

6. Amerisave agrees that this Agreement does not invalidate or otherwise make void any agreements previously entered into with any Participating State, to the extent such prior agreements do not conflict with the terms of this Agreement.

7. Amerisave agrees to ensure that: (i) all residential mortgage loans are originated by MLOs who are licensed in all states in which such licenses are required under applicable

state law; and (ii) all mortgage applications are signed by the licensed MLOs responsible for such loans; and (iii) in states which require MLO licensing for solicitation activities, residential mortgage loans are only solicited by licensed MLOs.

8. Within a reasonable time, Amerisave will take the following steps to implement certain of the compliance terms in this Agreement:

- a. Amerisave will eliminate the position of SMP, and will offer current SMPs the opportunity to remain employed with Amerisave by becoming licensed MLOs.
- b. MLOs will be required to work from a licensed branch office or from Amerisave's licensed corporate headquarters in Atlanta, Georgia, unless a Participating State does not have a branch office licensing requirement.
- c. Amerisave may create one or more call centers staffed with Customer Service Representatives who will be supervised by licensed MLOs if required by applicable law, who will respond to general inquiries from potential and existing customers, and who will perform general customer service, administrative, and clerical activities as allowed under applicable federal and state law.
- d. Each Customer Service Representative staffing the call center will be an employee whose compensation will be based, in part, on compliance with Amerisave's policies and procedures and the quality of his or her customer service, and whose compensation will not be based on the volume of funded loans.
- e. Customer Service Representatives will direct any potential borrower or

customer who makes an inquiry, other than a general inquiry, to the Amerisave website or to an MLO licensed in the state where the property is located.

9. Amerisave agrees that, for one year following the Effective Date set forth in paragraph 18 of this Agreement, Amerisave will provide the Participating States with any script that it develops for use by its unlicensed employees when speaking with potential borrowers or customers. Participating States agree to notify Amerisave within 45 days of the receipt of any such script if the script presents any legal concerns for that Participating State.

10. Amerisave agrees that all mortgage loan records, including any correspondence associated with specific customer loan files, will be preserved and retained in the manner prescribed and to the extent required by applicable state and federal laws.

11. For purposes of assessing whether Amerisave has taken appropriate steps, in a timely manner, to implement the compliance terms of this Agreement, Amerisave agrees that:

- a. For one year following the Effective Date set forth in paragraph 18 of this Agreement, Amerisave will provide quarterly reports to representatives of the State Mortgage Regulators that will describe Amerisave's progress in licensing MLOs and branch offices; and
- b. Amerisave will contract with an independent third party, at Amerisave's expense, to conduct a compliance audit of a sample of Amerisave's total transactions in the period between 12 and 24 months after the Effective Date of this Agreement. If that audit suggests that Amerisave should take significant additional steps to implement the compliance terms of this Agreement, Amerisave will contract for a second compliance audit, at



Amerisave's expense, to be conducted on a sample of Amerisave's total transactions in the period between 12 and 24 months after the completion of the first compliance audit.

12. Nothing in this Agreement shall be interpreted to permit Amerisave or its employees to violate any provision of the SAFE Act or any applicable law or rule of the Participating States.

### **REPRESENTATIONS AND WARRANTIES**

13. Amerisave represents to the State Mortgage Regulators that Amerisave is implementing measures to become fully compliant with its obligations under this Agreement, and that Amerisave will hereafter continue to comply with all regulatory requirements imposed by each individual State Mortgage Regulator.

### **SETTLEMENT PAYMENTS**

14. Amerisave agrees to reimburse the Pennsylvania Department of Banking and Securities \$50,000 for investigative costs, which amount will be paid in one lump sum within ten days of the Effective Date of this agreement as defined in paragraph 18 below.

15. Amerisave agrees to make an aggregate settlement payment to the Participating States in the amount of \$2,250,000 US, which shall be apportioned among the State Mortgage Regulators as follows:

Alaska- \$8,351.85 US; Arizona- \$59,722.82 US; California- \$566,584.48 US; Connecticut- \$50,639.43 US; Georgia-\$120,075.59 US; Hawaii- \$13,269.48 US; Idaho- \$14,143.28 US; Illinois- \$82,543.08 US; Indiana- \$32,513.28 US; Iowa- \$15,301.56 US; Kentucky- \$24,750.73 US; Louisiana- \$40,905.77 US; Maryland- \$94,512.03 US; Massachusetts- \$118,531.21 US; Mississippi- \$17,536.85 US; Missouri- \$31,233.07

US; Montana- \$8,412.81 US; Nebraska- \$10,729.38 US; New Jersey- \$173,946.03 US; New Mexico- \$19,264.12 US; New York- \$18,065.19 US; North Carolina- \$107,375.09 US; North Dakota- \$3,759.35 US; Ohio- \$71,813.70 US; Oregon- \$41,495.07 US; Pennsylvania- \$129,362.20 US; South Carolina- \$34,017.02 US; South Dakota- \$4,003.20 US; Tennessee- \$50,700.39 US; Vermont- \$5,953.99 US; Virginia- \$139,969.65 US; Washington- \$71,041.51 US; West Virginia- \$14,102.63 US; Wisconsin- \$35,906.85 US; Wyoming- \$4,470.58 US; and the District of Columbia- \$14,996.75 US.

16. The settlement payments described in paragraphs 14 and 15 of this Agreement shall be made as follows:

- a. The payments described in paragraph 15 shall be made in equal semi-annual installments over a period of two years until the amount due each Participating State is fully paid. The first payment to each Participating State shall be made within ten days after execution of the Agreement, and the second payment shall be made six months after the execution of this Agreement. Additional semi-annual installment payments shall be made twelve months, eighteen months and twenty-four months after the execution of this Agreement.
- b. The payments will be made in accordance with the payment instructions provided by each of the Participating States.
- c. Amerisave and each Participate State acknowledge and agree that the allocation of the aggregate settlement payment described in paragraphs 14 and 15 of this Agreement is appropriate and that the total aggregate payments made to the Participating States under this Agreement shall not exceed

\$2,300,000 inclusive of investigative costs.

17. Amerisave acknowledges that any surety bond(s) that it may maintain in each of the Participating States as a condition to maintaining Amerisave's mortgage license has been and continues to be a surety bond for payment of obligations of the type provided for in this Agreement. In the event that Amerisave fails to submit any payment(s) set forth in this Agreement, in the amounts specified herein and in accordance with the applicable deadlines, Amerisave agrees that it will not object to the State Mortgage Regulators submitting a claim(s), nor attempt to defend or defeat such authorized claim(s), for any unpaid amount(s) against said surety bond(s).

#### **GENERAL PROVISIONS**

18. Effectiveness. This Agreement shall become effective immediately upon the date it is fully executed by all of the State Mortgage Regulators ("Effective Date").

19. Consent. Amerisave hereby knowingly, willingly, voluntarily and irrevocably consents to the execution of this Agreement (without any admission of liability) pursuant to the authority of the State Mortgage Regulators in each Participating State and agrees that it understands all of the terms and conditions contained herein. Amerisave, by voluntarily entering into this Agreement, waives any right to a hearing or appeal concerning the terms, conditions and/or payments set forth in this Agreement.

20. Public Record. The provisions of this Agreement shall become public upon the Effective Date of this Agreement.

21. Entire Agreement. This Agreement contains the whole agreement between the Parties. There are no other terms, obligations, covenants, representations, statements, or conditions, of any kind whatsoever, concerning this Agreement.

22. Binding Nature. The terms of this Agreement shall be legally binding upon each State Mortgage Regulator and Amerisave's officers, owners, directors, employees, heirs, successors and assigns. The provisions of this Agreement shall remain effective and enforceable except to the extent that, and until such time as: (a) any provision of this Agreement shall have been modified, terminated, suspended, or set aside, in writing by mutual agreement of the State Mortgage Regulators collectively and Amerisave, or (b) there is a substantial change in federal or state law that would make further compliance with this Agreement unnecessary or unreasonable, in that Amerisave would be subject to requirements or prohibitions that would not apply to other mortgage lenders.

23. Standing and Choice of Law. Each State Mortgage Regulator has standing to enforce this agreement in the courts or administrative hearing process of the State Mortgage Regulator's home state. In the event of any disagreement between any State Mortgage Regulator and Amerisave regarding the enforceability or interpretation of this agreement or any Party's compliance therewith, the courts or administrative hearing process of the state of the State Mortgage Regulator shall have exclusive jurisdiction over the dispute, and the substantive and procedural laws of said State Mortgage Regulator's home state shall govern the interpretation, construction and enforceability of this agreement.

24. Counsel. This Agreement is entered into by the Parties upon full opportunity for legal advice from legal counsel.

25. Notices. Any notice or other communication that may or must be given by any of the Parties under this Agreement shall be in writing and shall be delivered by U.S. Mail, with a secondary form of delivery by e-mail (where possible), fax or prepaid overnight courier to:

For notices to Amerisave:

Carol Poupart  
President  
Amerisave Mortgage Corporation  
One Capital City Plaza  
3350 Peachtree Road 10th Floor  
Atlanta, GA 30326  
Fax: (678) 500-7554  
E-mail: cpoupart@amerisave.com

With a copy to:

Steven M. Kaplan, Esq.  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, D.C. 20006-1600  
Fax: (202) 778-9100  
E-mail: steven.kaplan@klgates.com

For notices to the Participating States and/or State Mortgage Regulators

Linda Carroll, Esq.  
Deputy Chief Counsel  
Pennsylvania Department of Banking and Securities  
Office of Chief Counsel  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101  
Fax: (717) 783-8427  
E-mail: licarroll@pa.gov

With a copy to:

Steven C. Sherman, Esq.  
Financial Legal Examiner Supervisor  
Washington Department of Financial Institutions  
Division of Consumer Services  
Enforcement Unit  
P.O. Box 41200  
Olympia, WA 98504  
Fax: 360-664-2258  
E-mail: Steven.Sherman@dfi.wa.gov

Notices given to Linda Carroll and Steven Sherman as indicated above shall be effective notice

as to all of the Participating States and/or State Mortgage Regulators.

26. Privilege. None of the Parties hereto waives or intends to waive any applicable attorney-client, work product privilege, confidentiality, or any other protection applicable to any negotiations, statements, production of records, information or proceedings relative to this Agreement. This provision shall survive termination of this Agreement.

27. Limited Release. This Agreement is the complete document representing the resolution of any and all disputes between the Parties concerning all mortgage loan activities within the scope of the Multi-State Examination of Amerisave and/or the State Mortgage Regulators' follow-up investigation of the activities of Amerisave unlicensed employees and unlicensed branch locations. Neither Amerisave nor any of its owners, directors, officers, employees, successors or assigns will be subject to any related examination or enforcement claims or actions by the State Mortgage Regulators concerning any mortgage loan activities within the scope of the Multi-State Examination or the State Mortgage Regulators' follow-up investigation that occurred prior to the Effective Date of this Agreement. The State Mortgage Regulators reserve all of their rights, duties, and authority to enforce all statutes, rules and regulations under their jurisdictions against Amerisave regarding any mortgage loan activities outside the scope of this Agreement, the Multi-State Examination or the State Mortgage Regulators' follow-up investigation or that occurred after the Effective Date of this Agreement.

28. Other Enforcement Action.

- a. Notwithstanding any other relief to the contrary, if Amerisave fails to comply with any of the terms and conditions set forth above, the State Mortgage Regulators may pursue any action allowed by law concerning such failure, including, but not limited to, revocation of

any license of Amerisave, imposition of any fine against Amerisave, or any other remedy allowed by law. Further, the parties acknowledge and agree that any such failure by Amerisave to comply with this Agreement with respect to a particular State shall be treated as a violation of an order of the State Mortgage Regulator of such State and may be enforced as such.

- b. Amerisave acknowledges and agrees that this Agreement is only binding on the State Mortgage Regulators and not any other local, state or federal agency, department or office regarding matters within this Agreement.

29. Authorization. The persons below are authorized to execute this Agreement and to legally bind the Parties on behalf of whom they execute this Agreement.

30. Counterparts. This Agreement may be executed in separate counterparts, by facsimile or by PDF. A copy of the signed Agreement will be given the same effect as an originally signed Agreement.

31. Titles. The titles used to identify the paragraphs of this Agreement are for the convenience of reference only and do not control the interpretation of this Agreement.

**WHEREFORE**, in consideration of the foregoing, including the recital paragraphs, the State Mortgage Regulators and Amerisave, intending to be legally bound, do hereby execute this Agreement.

FOR AMERISAVE MORTGAGE CORPORATION:

/s/ Carol Poupart  
(Officer Signature)

Carol Poupart  
(Officer Name)

President  
(Title)

Date: 07/31/13