

**UNITED STATES OF AMERICA
BUREAU OF CONSUMER FINANCIAL PROTECTION**

ADMINISTRATIVE PROCEEDING File
No. 2020-BCFP-0024

In the Matter of:

**Seterus, Inc. and
Kyanite Services, Inc., as the
successor in interest to Seterus, Inc.**

CONSENT ORDER

The Bureau of Consumer Financial Protection (Bureau) has reviewed the servicing practices of Seterus, Inc. (Seterus) relating to loss mitigation applications and has identified the following law violations. First, Seterus has committed unfair acts or practices by failing to accurately review, process, track, and communicate to borrowers information regarding their applications for loss mitigation options. Second, Seterus has committed deceptive acts or practices by sending loss mitigation application acknowledgment notices that misrepresented the status of borrower application documents as received or missing and provided inaccurate due dates for submission of borrower application documents. Third, Seterus has violated the provisions relating to loss mitigation procedures in Regulation X, 12 C.F.R. § 1024.41, the implementing regulation of the 2013 Real Estate Settlement

Procedures Act (RESPA), 12 U.S.C. § 2601, *et seq.*, by (1) sending acknowledgment notices that failed to state the additional documents and information borrowers needed to submit to complete their loss mitigation applications; (2) failing to provide a reasonable due date for submission of borrower documents; (3) failing to exercise reasonable diligence in obtaining documents and information necessary to complete borrowers' loss mitigation applications; (4) failing to properly evaluate borrowers who submitted complete loss mitigation applications for all loss mitigation options available to the borrower; and (5) failing to treat certain applications as "facially complete" when required under Regulation X. Fourth, because Regulation X is a Federal consumer financial law, Seterus's violations of Regulation X also constitute violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5536(a)(1)(A). Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order) against Seterus and Kyanite Services, Inc., as the successor in interest to Seterus.

I.

Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565 and under RESPA, 12 U.S.C. § 2601, *et seq.*, and its implementing regulation, Regulation X, 12 C.F.R. Part 1024.

II.

Stipulation

2. Respondent, as defined below, has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated December 10, 2020 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III.

Definitions

3. The following definitions apply to this Consent Order:

- a. “Acknowledgment Notice” means any notice sent to a borrower seeking loss mitigation that acknowledges receipt of the borrower’s loss mitigation application materials, indicates that the servicer has determined that the loss mitigation application is either complete or incomplete, and if the application is incomplete, purports to inform the borrower of the additional documents or information the borrower must submit to make the loss mitigation application complete and a date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

“Acknowledgment Notice” includes “(b)(2) Notices” as well as any other notices meeting this definition of “Acknowledgment Notice” sent to the borrower, whether or not the notice was required by 12 C.F.R. § 1024.41(b)(2).

- b. “Affected Consumer” means a borrower (i) whose mortgage loan was secured by a property that was the borrower’s principal residence, (ii) whose mortgage loan was serviced by Seterus, (iii) who submitted a Loss Mitigation Document to Seterus between January 10, 2014 and April 30, 2018, and (iv) to whom Seterus thereafter sent one or more Defective Acknowledgment Notices, with the following limitations:

- i. The term “Affected Consumer” does not include any borrower for whom (1) the last Acknowledgment Notice sent to the borrower was accurate; (2) the last Acknowledgment Notice sent to the borrower provided at least 30 days to return documents; and (3) the foreclosure sale of the borrower’s property occurred more than 30 days after the due date to return documents identified in the last Acknowledgment Notice sent to the borrower; and
 - ii. The term “Affected Consumer” does not include any borrower whose loans were paid in full before or within 30 days of the date Seterus sent the first Defective Acknowledgment Notice to the borrower.
- c. “(b)(2) Notice” means the written notice a servicer is required to send to borrowers seeking loss mitigation pursuant to 12 C.F.R. § 1024.41(b)(2).
- d. “Board” means Respondent’s duly-elected and acting Board of Directors or equivalent delegated person or entity vested with equivalent authority.
- e. “Defective Acknowledgment Notice” means:
 - i. an Acknowledgment Notice sent between January 10, 2014 and January 5, 2015;

- ii. an Acknowledgment Notice that requested any document, which was sent between January 6, 2015 and January 31, 2016, to any borrower seeking a liquidation option; and
- iii. an Acknowledgment Notice sent between January 6, 2015 and April 30, 2018 that contained one or more of the following defects:
 - A. the due date for required documents to be returned was incorrect for at least one of the following reasons:
 - 1. the due date fell on, or after, the actual foreclosure sale date;
 - 2. the Acknowledgment Notice inaccurately provided 30 days to return documents;
 - 3. the due date fell before the Acknowledgment Notice letter date;
 - 4. the due date was the same day as the Acknowledgment Notice letter date;
 - 5. the due date was different from the due date indicated in another substantively identical Acknowledgment Notice sent on the same day;
 - 6. the Acknowledgment Notice required a due date but did not contain a due date; or

- B. the Acknowledgment Notice was sent on or after an actual foreclosure sale date.
- f. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
- g. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or her delegate.
- h. “Foreclosed Group 1 Borrower” means any Affected Consumer whose property was sold at foreclosure within 90 days of the date that Seterus sent the last Defective Acknowledgment Notice to the borrower, with the following limitations:
 - i. Foreclosed Group 1 Borrower does not include any borrower who received a loss mitigation offer, based on a full loss mitigation review, between the date Seterus sent the last Defective Acknowledgment Notice to the borrower and the date of the foreclosure sale; and
 - ii. Foreclosed Group 1 Borrower does not include any borrower who received a loss mitigation denial, for a reason other than failure to submit required documents, between the date Seterus sent the last

Defective Acknowledgment Notice to the borrower and the date of the foreclosure sale.

- i. “Foreclosed Group 2 Borrower” means any Affected Consumer who (i) submitted his or her documents by the latest date specified in the Defective Acknowledgment Notice(s) sent to the borrower, and (ii) was approved for a loan modification, but for whom (a) a foreclosure sale took place prior to the expiration date by which the borrower was required to accept, decline, or appeal the modification decision and (b) the foreclosure sale was not rescinded.
- j. “Loss Mitigation Document” means any one of the following documents: bank statement; profit and loss statement; pay stub; estimated HUD-1; sales contract; listing agreement; MLS listing history; hardship letter; award letter; signed credit report authorization; signed IRS Form 4506T-EZ; IRS Form 4506T; invalid 4506T; and Uniform Borrower Assistance Form.
- k. “Non-Foreclosed Borrower” means any Affected Consumer whose property was not sold at foreclosure within 90 days of the date Seterus sent the last Defective Acknowledgment Notice to the borrower, with the following limitations:

- i. Non-Foreclosed Borrower does not include any borrower who received a loss mitigation offer, based on a full loss mitigation review, within 120 days of the date Seterus sent the first Defective Acknowledgment Notice to the borrower;
- ii. Non-Foreclosed Borrower does not include any borrower who received a loss mitigation denial, for a reason other than failure to submit required documents, within 120 days of the date Seterus sent the first Defective Acknowledgment Notice to the borrower;
- l. “Purchaser” means Nationstar Mortgage LLC, doing business as Mr. Cooper.
- m. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- n. “Relevant Period” includes the period from January 10, 2014 to April 30, 2018.
- o. “Respondent” means Seterus, Inc., as it existed until February 28, 2019 and thereafter refers to Kyanite Services, Inc. (Kyanite), as the

successor in interest to Seterus, and Kyanite's successors and assigns.

Respondent does not include Purchaser.

- p. "Triggering Document" means a document the receipt of which triggered Seterus's internal systems to initiate the automated Acknowledgment Notice process.

IV. Bureau Findings and Conclusions

The Bureau finds the following:

4. During the Relevant Period, Seterus was a wholly-owned subsidiary of Kyanite. Seterus maintained its principal place of business in Raleigh, North Carolina.
5. As of February 28, 2019, Seterus was sold, including all rights and certain liabilities, to Purchaser.
6. At its height, Seterus serviced approximately 500,000 residential mortgage loans. Respondent has represented that it is no longer engaged in servicing mortgage loans.
7. At all times during the Relevant Period, Respondent was a "covered person," as that term is defined by 12 U.S.C. § 5481(6), because as a residential mortgage servicer, it offered or provided a consumer financial product or service. 12 U.S.C. § 5481(15)(A)(i).

8. Regulation X requires, among other things, that a mortgage servicer that offers loss mitigation options implement processes that: (i) inform borrowers of the documents and information they must provide to complete the application; (ii) provide borrowers a reasonable date to submit the documents and information necessary to complete the application; (iii) evaluate complete applications received early enough in the foreclosure process for all alternatives to foreclosure available to the borrower; and (iv) provide certain foreclosure protections to borrowers who complete an application by certain points in the foreclosure process. 12 C.F.R. § 1024.41.
9. A servicer must provide a written notice to the borrower within five days of receipt of a loss mitigation application acknowledging that the servicer has received the application and stating that the servicer has determined that the application is either complete or incomplete. 12 C.F.R. § 1024.41(b)(2)(i)(B). If the application is incomplete, this (b)(2) Notice must also inform the borrower of the additional documents and information that the borrower must submit and a reasonable date by which they should be submitted to make the application complete. *Id.* at §§ 1024.41(b)(2)(i)(B), 1024.41(b)(2)(ii).
10. Once a servicer receives all the information it requires from the borrower to evaluate the application, the application is “complete.” 12 C.F.R. § 1024.41(b)(1).

11. If a servicer receives a “complete” application within certain specified time periods before a borrower’s scheduled foreclosure sale, the servicer must evaluate the borrower for all loss mitigation options available to the borrower and must provide the borrower with certain foreclosure protections. 12 C.F.R. § 1024.41(c)(1)(i), (f)(2), & (g).
12. If the borrower has submitted all of the documents and information requested by the (b)(2) Notice, or the servicer does not seek additional documents in the (b)(2) Notice, the application is “facially complete.” 12 C.F.R. § 1024.41(c)(2)(iv). A borrower with a “facially complete” application is entitled to the same protections from foreclosure actions as a borrower with a “complete” application, even if the servicer later discovers it needs additional information or that the borrower must make corrections to a previously submitted document. *Id.*

Seterus Failed to Accurately Review, Process, Track, and Communicate to Borrowers Information Regarding Their Applications for Loss Mitigation.

13. As part of its efforts to comply with Regulation X, Seterus made the decision to issue Acknowledgment Notices in response to any document received from a consumer that may be in support of a loss mitigation application, in order to assist the consumer in the loss mitigation process. Seterus also automated its loss mitigation application and Acknowledgment Notice process, including its

processes for tracking documents submitted by borrowers and populating and generating the Acknowledgment Notices.

14. To facilitate that automation, and to try to meet the five-day requirement in 12 C.F.R. 1024.41(b)(2)(i)(B), Seterus contracted with a third-party vendor to process all borrower documents submitted as part of a loss mitigation application.
15. Upon receipt of a Triggering Document, the third-party vendor would electronically capture an image of the document and “brand” the imaged document by electronically tagging the document with the loan number, an index code corresponding to the document type, a unique identifier for that specific document, and the date the document was scanned directly on the document and then upload the scanned document to Seterus’s internal systems.
16. After uploading a Triggering Document to Seterus’s internal systems, the third-party vendor would then electronically extract and validate the data and text from the image of the Triggering Document and transmit that data to Seterus’s internal systems.
17. Seterus’s personnel wrote code for various computer software to ensure that the third-party vendor’s computer system could communicate and share data with Seterus’s internal loss mitigation and mortgage servicing computer

systems, and that Seterus's internal systems could communicate and share data with one another.

18. Seterus's Acknowledgment Notices provided consumers with a list of documents Seterus had received and their expiration dates ("Documents we have received"), and a list of documents Seterus still needed to evaluate the application ("Documents still needed").
19. Seterus's Acknowledgment Notices also provided a date by which the borrower needed to return any missing documents and informed the borrower that the due date provided was based on the earliest of a set of milestones: (1) the date on which the documents expire; (2) the 120th day of delinquency; (3) 90 days prior to the foreclosure sale date, if any; or (4) 38 days prior to the foreclosure sale date (if the application was made within 90 days of a foreclosure sale date).
20. Seterus populated the fields in the Acknowledgment Notice that provided the "Documents we have received," "Documents still needed," and due dates for documents the borrower still needed to submit using the data its third-party vendor extracted from the documents submitted by the borrower.
21. Seterus's third-party vendor made numerous errors in branding, coding and extracting data from borrower documents, and Seterus used that inaccurate data to populate these fields in the Acknowledgment Notice.

22. Further, the coding on which Seterus relied to ensure its internal systems were communicating properly with each other and with the third-party vendor's system was not always correct, which led to further such errors.
23. As a result of its reliance on this inaccurate data and coding and the faulty communication between various computer systems, Seterus sent out thousands of Acknowledgment Notices that contained one or more errors.
24. Certain Acknowledgment Notices inaccurately listed documents that Seterus had received as missing, inaccurately listed documents that had not been received as having been received, or both. This included Acknowledgment Notices that did not request additional documents even when required documents were missing and Acknowledgment Notices informing borrowers that their loss mitigation applications were "complete" or "facially complete" when required documents were missing.
25. Seterus also sent numerous Acknowledgment Notices that provided no due date; inaccurate due dates, such as dates that were the same date or prior to the date that the Acknowledgment Notice was sent; or unreasonable due dates, such as dates on or after the foreclosure sale date.
26. Further, despite its express representations in the Acknowledgment Notices that the due date was not after the date when previously submitted documents

would expire, Seterus sent Acknowledgment Notices that provided due dates that were after the date when previously submitted documents would expire.

27. The unreasonable due dates in Seterus's Acknowledgment Notices also rendered other statements in the Acknowledgment Notices inaccurate. For example, in certain instances Seterus sent Acknowledgment Notices that provided a due date that was just one or two days before the borrower's scheduled foreclosure sale date. Seterus represented that as long as the borrower provided the documents by the date indicated, he or she would be evaluated for loss mitigation, but that representation was not always correct when the due date was not sufficiently in advance of the scheduled foreclosure sale date.
28. In other instances, the representation that the application would be evaluated if the missing documents were submitted by the due date was inaccurate because Seterus held foreclosure sales on the properties before the due date.
29. Additionally, in an effort to better assist borrowers seeking loss mitigation, Seterus sent a new Acknowledgment Notice for each document a borrower sent in, even though these additional Acknowledgment Notices were not required by Regulation X. These additional Acknowledgment Notices usually provided a new due date, which resulted in some borrowers receiving multiple

Acknowledgment Notices with different due dates on the same day, or in quick succession, some of which were inaccurate.

30. Seterus discovered the systemic errors in the data provided by its third-party vendor as early as the first quarter of 2014, and took steps to attempt to remedy the problems, but many of those attempts were either ineffective or compounded the problem. For example, in January 2015, Seterus instituted manual reviews in an attempt to correct the errors in its Acknowledgment Notices but continued to rely on incorrect data from its third-party vendor to populate its systems and to process and track the applications. As a result, Seterus continued to send out Acknowledgment Notices with defects, albeit at a significantly lower defect rate.
31. Further, in 2014, when Seterus first realized that some consumers had received inaccurate Acknowledgment Notices, Seterus issued “correction” Acknowledgment Notices. Because Seterus continued to rely on the inaccurate data from its vendor to generate them, some “correction” Acknowledgment Notices contained the same errors as the original inaccurate Acknowledgment Notices.
32. On September 4, 2014, Seterus and the New Hampshire Banking Department entered into a settlement related to Seterus’s inaccurate Acknowledgment Notices.

33. On March 20, 2015, Seterus reported these issues to the Bureau.
34. Seterus continued to send out inaccurate Acknowledgment Notices containing certain defects through April 2018, though the types and frequency of defects declined over time.
35. Seterus took steps to mitigate the harm caused by its inaccurate Acknowledgment Notices by offering streamlined loan modifications, which are modification offers made without requiring the borrower to submit any hardship or income documentation, and waiving or foregoing foreclosure deficiency judgments for certain borrowers who received a Defective Acknowledgment Notice.
36. Seterus's use of inaccurate data from its vendor, failure to provide accurate or complete information about what documents Seterus had received from consumers and what documents consumers still needed to submit to complete their loss mitigation applications, failure to provide due dates, and provision of incorrect or unreasonable due dates, delayed or deprived some borrowers of a reasonable opportunity to get their loss mitigation applications completed and evaluated, and resulted in some borrowers suffering improper foreclosure activity because they were either delayed in obtaining or unable to obtain a foreclosure hold.

Seterus Failed to Evaluate Borrowers Who Submitted Complete Loss Mitigation Applications for all Loss Mitigation Options Available to the Borrower.

37. Seterus's Loss Mitigation department was divided into two separate divisions – Retention and Liquidation.
38. Seterus's loss mitigation policies did not allow for a borrower to be reviewed simultaneously for both retention and liquidation options.
39. Borrowers who failed to indicate a preference for either retention or liquidation, and borrowers who requested to be reviewed for both options at the same time, were told their applications could not be reviewed until they made their intention clear about whether or not they wanted to retain the property.
40. If a borrower submitted a loss mitigation application that did not indicate a preference for either retention or liquidation, Seterus considered the document incomplete and the borrower was required to resubmit the application with only one of the two review types selected.
41. Borrowers who indicated a preference for retention were not reviewed for liquidation options unless they were denied a retention option and then subsequently requested a liquidation review, usually by submitting a new application form requesting consideration for liquidation options. If documents in their initial retention application had expired by the time the

borrower was denied a retention option, the borrower may have had to submit updated supporting documentation in addition to new documents that Seterus required only when evaluating a borrower's eligibility for a liquidation option.

42. Borrowers who indicated a preference for a liquidation option were not reviewed for retention options unless they submitted a new loss mitigation application requesting a review for retention options.
43. Seterus further divided its review of liquidation options between short sales and deeds in lieu of foreclosure, and did not permit borrowers to be reviewed simultaneously for both options.

Seterus Did Not Treat Liquidation Applications as “Facially Complete.”

44. Seterus did not treat loss mitigation applications seeking a liquidation option as “facially complete” even when those applications met the requirements of a “facially complete” application under Regulation X.

**Seterus's Violations of the Consumer Financial Protection Act,
12 U.S.C. §§ 5531 and 5536(a)(1)(B)**

45. The CFPB prohibits covered persons from engaging “in any unfair, deceptive, or abusive act or practice.” 12 U.S.C. §§ 5531, 5536(a)(1)(B).

Unfair Acts and Practices

46. An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and if the substantial injury

is not outweighed by countervailing benefits to consumers or to competition.

12 U.S.C. § 5531(c).

47. As described in paragraphs 13 through 36, Seterus's use of inaccurate data from its third-party vendor and inaccurate computer coding delayed or deprived borrowers of a reasonable opportunity to get their loss mitigation applications completed and evaluated.
48. These acts or practices caused or were likely to cause substantial injury to borrowers in the form of additional interest, late fees, and negative credit reporting; failure to qualify for loss mitigation; and delayed protection from prohibited foreclosure activities or an inability to obtain such protection at all.
49. These injuries were not reasonably avoidable by borrowers as borrowers could not modify their loans without the assistance of Seterus.
50. These injuries were not outweighed by any countervailing benefits to consumers or competition. Neither borrowers nor competition realized a benefit from Seterus's use of inaccurate data and coding to process, review, track, and communicate information regarding loss mitigation applications.
51. Thus, during the Relevant Period, Seterus engaged in unfair acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(c)(1), 5536(a)(1)(B).

Deceptive Acts and Practices

52. An act or practice is deceptive if it involves a material representation or omission that misleads, or is likely to mislead, a consumer acting reasonably under the circumstances.
53. As described in paragraphs 13 through 36, Seterus sent numerous Acknowledgment Notices during the Relevant Period that misrepresented, directly or indirectly, expressly or by implication, that: certain loss mitigation documents had been received; certain loss mitigation documents had not been received; the borrower's loss mitigation application was "complete" or "facially complete"; that the due date for documents that had not been received was the date set forth in the Acknowledgment Notice, and/or the borrower's application would be reviewed and evaluated for loss mitigation if the borrower submitted the missing documents by the due date set forth in the Acknowledgment Notice. It was reasonable for borrowers to believe that the information they received from their mortgage servicer regarding the status of their loss mitigation application, the documents they needed to submit, and due dates for those documents, was accurate.
54. Thus, during the Relevant Period, Seterus engaged in deceptive acts and practices in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Seterus's Violations of Regulation X, 12 C.F.R. § 1024.41

Violations of 12 C.F.R. § 1024.41(b)(2)

55. Regulation X requires a servicer to send a (b)(2) Notice within five days of receipt of a loss mitigation application, which informs the borrower: (1) that the servicer has received the application; (2) that the servicer has determined that the application is either complete or incomplete; and (3) if the application is incomplete, what additional documents and information the borrower must submit to make the application complete and a reasonable date by which they should be submitted. 12 C.F.R. §§ 1024.41(b)(2)(i)(B), 1024.41(b)(2)(ii).
56. As described in paragraphs 13 through 36, Seterus sent numerous purported (b)(2) Notices that failed to accurately or completely state the additional documents and information the borrower needed to submit to make their loss mitigation application complete.
57. As described in paragraphs 13 through 36, Seterus sent numerous purported (b)(2) Notices that failed to provide a due date, and when due dates were provided, those due dates were often inaccurate or unreasonable.
58. Thus, during the Relevant Period, Seterus violated 12 C.F.R. §§ 1024.41(b)(2)(i)(B), 1024.41(b)(2)(ii).

Violations of 12 C.F.R. § 1024.41(b)(1)

59. Regulation X requires servicers to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. 12 C.F.R. § 1024.41(b)(1).
60. As described in paragraphs 13 through 36, Seterus sent Acknowledgment Notices that failed to identify or incorrectly or incompletely identified the documents and information Seterus required from the borrower to complete their loss mitigation applications.
61. By sending Acknowledgment Notices that failed to accurately and completely describe the information required to complete borrower applications, Seterus did not exercise reasonable diligence in obtaining documents and information necessary to complete the application.
62. Thus, during the Relevant Period, Seterus violated 12 C.F.R. § 1024.41(b)(1).

Violations of 12 C.F.R. § 1024.41(c)(1)(i)

63. Regulation X requires a servicer to “evaluate the borrower for all loss mitigation options available to the borrower” within 30 days, if the servicer receives a “complete” loss mitigation application more than 37 days before a foreclosure sale. 12 C.F.R. § 1024.41(c)(1).
64. As described in paragraphs 37 through 43, Seterus bifurcated its loss mitigation review and would not review borrowers for both retention and

liquidation options at the same time, nor would Seterus review borrowers seeking liquidation for all available liquidation options.

65. Thus, during the Relevant Period, Seterus violated § 12 C.F.R. 1024.41(c)(1)(i).

Violations of 12 C.F.R. § 1024.41(c)(2)(iv)

66. Regulation X provides that loss mitigation applications shall be considered “facially complete” (1) when a borrower submits all the missing documents and information as stated in the (b)(2) Notice, or (2) when no additional documents or information are requested in the (b)(2) Notice. 12 C.F.R. § 1024.41(c)(2)(iv).
67. As described in paragraph 44, Seterus did not treat liquidation applications as facially complete even when those applications were facially complete as defined by 12 C.F.R. § 1024.41(c)(2)(iv).
68. By failing to treat borrowers’ liquidation applications as facially complete, Seterus deprived those borrowers of the protections and rights specified in 12 C.F.R. § 1024.41(d), (e), (f)(2), (g), & (h).
69. Thus, during the Relevant Period, Seterus violated 12 C.F.R. § 1024.41(c)(2)(iv).

Seterus’s Violations of the Consumer Financial Protection Act,
12 U.S.C. § 5536(a)(1)(A)

70. The CFPA provides that it is unlawful for any covered person “to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).
71. The term “Federal consumer financial law” includes any rule prescribed by the Bureau under an enumerated consumer law. 12 U.S.C. § 5481(14). Regulation X is “Federal consumer financial law” because it is a rule prescribed by the Bureau under RESPA, which is an “enumerated consumer law.” 12 U.S.C. § 5481(12)(M).
72. Thus, Seterus’s violations of Regulation X described in paragraphs 13 through 44 during the Relevant Period also constitute violations of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

ORDER

V.

Conduct Provisions

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, that:

73. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly,

may not violate the loss mitigation procedures required by Regulation X, 12 C.F.R. § 1024.41.

74. In the event that Respondent resumes mortgage servicing operations, whether the entity operates under the name Seterus or another name, Respondent will:
- a. implement policies and procedures that meet Respondent's loss mitigation and foreclosure protection obligations under Regulation X, 12 C.F.R. § 1024.41;
 - b. implement procedures to ensure that before a foreclosure action is taken it is permitted under Regulation X, 12 C.F.R. § 1024.41, and implement testing to ensure foreclosure protections are properly being afforded to borrowers;
 - c. implement processes and controls to oversee and monitor its vendors who provide services in connection with loss mitigation applications to ensure that Respondent's use of those vendors does not result in violations of Regulation X, 12 C.F.R. § 1024.41;
 - d. implement policies and procedures to ensure borrowers are evaluated for all loss mitigation options available to the borrower based upon a single, timely, complete application;

- e. ensure that Acknowledgment Notices accurately state the documents and information required from borrowers to complete loss mitigation applications; and
- f. implement policies and procedures to ensure that, once Respondent has received the information it requires from the borrower to evaluate the borrower's loss mitigation application for all loss mitigation options available to the borrower, it will provide the borrower with all protections required by Regulation X, 12 C.F.R. § 1024.41.

VI. Order to Pay Redress

IT IS FURTHER ORDERED that:

- 75. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account \$4,932,525, for the purpose of providing redress as required by this Section (Redress Fund). The Redress Fund will be the source from which Respondent will pay redress as follows:
 - a. \$1,880,025 from the Redress Fund will be distributed on a pro rata basis to the approximately 10,743 Non-Foreclosed Borrowers;
 - b. \$2,802,500 from the Redress Fund will be distributed on a pro rata basis to the approximately 1,121 Foreclosed Group 1 Borrowers; and

- c. \$250,000 from the Redress Fund will be distributed on a pro rata basis to the 2 Foreclosed Group 2 Borrowers.

76. Within 45 days of the Effective Date, Respondent must submit to the Enforcement Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Enforcement Director will have the discretion to make a determination of non-objection to the Redress Plan or direct Respondent to revise it. If the Enforcement Director directs Respondent to revise the Redress Plan, Respondent must make the revisions and resubmit the revised Redress Plan to the Enforcement Director within 30 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.
77. The Redress Plan must:
 - a. Specify how Respondent will identify the Affected Consumers entitled to redress for the purpose of providing redress under paragraph 75 of this Consent Order;
 - b. Include the form of the letter (Redress Notice) and envelope to be sent notifying Affected Consumers who are entitled to redress of their right to redress; the Redress Notice must include a statement that the

payment is made in accordance with the terms of this Consent Order; Respondent must not include in any envelope containing a Redress Notice any materials other than the approved Redress Notices and redress checks, unless Respondent has written confirmation from the Enforcement Director that the Bureau does not object to the inclusion of such additional materials;

- c. Describe the process for providing redress to Affected Consumers entitled to redress, and must include the following requirements:
 - i. Prior to sending redress checks and Redress Notices, Respondent must make reasonable attempts to obtain a current address for each Affected Consumer entitled to redress using, at a minimum, the National Change of Address System (NCAS);
 - ii. Respondent must mail a redress check and the Redress Notice to each Affected Consumer entitled to redress, or their authorized representative;
 - iii. Respondent must send the redress check by United States Postal Service first-class mail, address correction service requested, to the most recent address for each Affected Consumer entitled to redress;

- iv. Respondent must send the redress check by certified mail to the Foreclosed Group 2 Borrowers;
- v. For Foreclosed Group 1 Borrowers, if no updated address is provided by NCAS, Respondent must make reasonable attempts to obtain a current address for such customers by skip-tracing and/or by emailing them at their last known email address. If no address can be located by such means, Respondent may mail the check to the last known mailing address;
- vi. For all other Affected Consumers entitled to redress, if no updated address is provided by NCAS, Respondent must mail the check to the last known address. If a redress check is returned to Respondent as undeliverable, Respondent must make additional reasonable attempts to obtain a current address for such consumers using a commercially available database other than the NCAS or by skip-tracing and/or by emailing them at their last known email address. Respondent must promptly re-mail all returned redress checks and the Redress Notice to each Affected Consumer's current addresses, if any, obtained through such reasonable attempts;

- vii. If a redress check that Respondent has attempted to send to an Affected Consumer entitled to redress, as specified under subparagraphs iv through vi, is returned to Respondent, Respondent must retain the redress amount of such consumer for a period of one hundred and eighty (180) days from the date the check was mailed or re-mailed, whichever is later, during which period such amount may be claimed by such consumer upon appropriate proof of identity; and
 - viii. Any redress amount remaining unclaimed after one hundred and eighty (180) days from the date the check was mailed or re-mailed, whichever is later, will be turned over to the Bureau as set forth in paragraph 80;
 - d. Provide that Respondent shall pay all costs of administering the Redress Plan as required by this Section; and
 - e. Set forth all procedures, deadlines, and timeframes for completing each step of the Redress Plan, consistent with the terms of this Consent Order.
78. Respondent must mail all redress checks and Redress Notices within 30 days after the Enforcement Director has made a determination of non-objection to the Redress Plan.

79. Within 60 days of completing all aspects of the Redress Plan, Respondent must submit a Redress Plan Report to the Enforcement Director, which must include Respondent's review and assessment of Respondent's compliance with the terms of the Redress Plan, including:
- a. the total number of Affected Consumers in each of the categories listed in paragraph 75 above;
 - b. the procedures used to issue and track redress payments;
 - c. the amount and status of all unclaimed redress payments; and
 - d. the work of independent consultants that Respondent has used, if any, to assist and review its execution of the Redress Plan.
80. After completing the Redress Plan, if the amount of claimed redress provided to Affected Consumers entitled to redress is less than the Redress Fund, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of claimed redress provided to Affected Consumers and the Redress Fund.
81. The Bureau may use these remaining funds to pay additional redress to Affected Consumers described in paragraph 75. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable

or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

82. Respondent may not condition the payment of any redress to any Affected Consumer on that Affected Consumer waiving any right.

VII.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

83. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$500,000 to the Bureau.
84. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
85. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

86. Respondent must, for all purposes, treat the civil money penalty paid under this Consent Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
 - b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
87. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the

amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

VIII.

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

88. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
89. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
90. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
91. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That

notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

IX. Reporting Requirements

IT IS FURTHER ORDERED that:

92. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address.

Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case, no later than 14 days after the development.

93. Within 7 days of the Effective Date, Respondent must designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent.

94. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate

written compliance progress report (Compliance Report), which, at a minimum:

- a. Lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
- b. Describes in detail the manner and form in which Respondent has complied with the Redress Plan; and
- c. Attaches a copy of each Order Acknowledgment obtained under Section X, unless previously submitted to the Bureau.

**X.
Order Distribution and Acknowledgment**

IT IS FURTHER ORDERED that,

95. Within 7 days of the Effective Date, Respondent must submit to the Enforcement Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
96. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and

representatives who have responsibilities related to the subject matter of the Consent Order.

97. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section IX, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
98. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

XI.

Recordkeeping

IT IS FURTHER ORDERED that

99. Respondent must create, or if already created, must retain for the duration of the Consent Order, the following business records:

- a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
- b. all documents and records pertaining to the Redress Plan, described in Section VI above.

100. Respondent must retain the documents identified in paragraph 99 for the duration of the Consent Order.

101. Respondent must make the documents identified in paragraph 99 available to the Bureau upon the Bureau's request.

XII. Notices

IT IS FURTHER ORDERED that:

102. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re Seterus, Inc.*, File No. 2020-BCFP-0024," and send them by overnight courier or first-class mail to the below address and contemporaneously by email to

[Enforcement Compliance@cfpb.gov](mailto:Enforcement_Compliance@cfpb.gov):

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XIII.

Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Respondent's compliance with this Consent Order:

103. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondent's compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Respondent's compliance with those requirements.
104. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondent's compliance with those requirements any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

105. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XIV.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

106. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

107. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XV.

Administrative Provisions

108. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in paragraph 109.

109. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
110. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
111. This Consent Order will terminate 5 years from the Effective Date. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

112. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
113. Should Respondent seek to transfer or assign, after the Effective Date, all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
114. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPB, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
115. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

116. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 16th day of December, 2020.



Kathleen L. Kraninger

Director

Bureau of Consumer Financial Protection