

Terms Completed

ORDER SUMMARY – Case Number: C-07-320

Name(s): Assurity Financial Services LLC
Calvin B. Hamler
Troy P. Hamler

Order Number: C-07-320-08-CO01

Effective Date: August 7, 2008

License Number: DFI: 29117 [NMLS: 1799] -Assurity
Or NMLS Identifier [U/L] NMLS: 5844 -Troy

(Revoked, suspended, stayed, application denied or withdrawn)
If applicable, you must specifically note the ending dates of terms.

License Effect: Revoked – stayed for 2 years

Not Apply Until: _____

Not Eligible Until: _____

5 year ban -stayed for 2 years.

Prohibition/Ban Until: _____

Investigation Costs	\$5,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$125,000-paid \$125,000 stayed	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: _____

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

NO. C-07-320-08-CO01

ASSURITY FINANCIAL SERVICES, LLC, and
CALVIN B. HAMLER, TROY P. HAMLER, sole
owners and managing members of Assurity
Financial Services, LLC,
Respondents.

CONSENT ORDER

9 COMES NOW the Director of the Department of Financial Institutions (Director), through his designee
10 Deborah Bortner, Division Director, Division of Consumer Services, and Assurity Financial Services, LLC
11 (hereinafter Respondent Assurity), Calvin B. Hamler, owner and managing member (hereinafter Respondent
12 Calvin B. Hamler), and Troy P. Hamler, owner and managing member (hereinafter Respondent Troy P. Hamler),
13 by and through their attorney, John L. Bley, and finding that the issues raised in the captioned matter may be
14 economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered
15 pursuant to chapter 31.04 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative
16 Procedure Act, based on the following:

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AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents
have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-320-08-SC01
(Statement of Charges), entered March 5, 2008, (copy attached hereto). Pursuant to chapter 31.04 RCW, the
Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to
the Department's entry of this Consent Order and further agree that the issues raised in the above captioned matter
may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order
to fully resolve the Statement of Charges and agree that Respondents do not admit any wrongdoing by its entry.

CONSENT ORDER
C-07-320-08-CO01
Assurity Financial Services, LLC and Calvin B.
Hamler and Troy P. Hamler

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 Respondents are agreeing not to contest the Statement of Charges in consideration of the terms of this Consent
2 Order.

3 Based upon the foregoing:

4 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
5 activities discussed herein.

6 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing
7 before an administrative law judge, and that they have waived their right to a hearing and any and all
8 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
9 Accordingly, Respondents agree to withdraw their appeal and to inform the Office of Administrative Hearings in
10 writing of their withdrawal.

11 **C. No Admission of Liability.** The parties intend this Consent Order to fully resolve the Statement of
12 Charges and agree that Respondents do not admit to any wrongdoing by its entry.

13 **D. License Revocation (Stayed).** It is AGREED that Respondent Assurity Financial Services, LLC
14 (Respondent Assurity) is subject to a revocation of its consumer loan company license by the Department.
15 HOWEVER, it is further AGREED that the revocation of Respondent Assurity's consumer loan company license
16 shall be stayed for a period of twenty-four (24) months from the date of entry of this Consent Order, subject to the
17 Department's authority to lift the stay and revoke Respondent Assurity's consumer loan license discussed in
18 paragraph G of this Consent Order. It is further AGREED that if, upon expiration of said twenty four (24) month
19 period, the stay has not been previously lifted, and Respondent Assurity's consumer loan license has not
20 previously been revoked, and if a notification to lift the stay or a proceeding to lift the stay is not then pending by
21 the Director to revoke respondent Assurity's consumer loan company license, then, in such events, the Department
22 shall consider this paragraph of this Consent Order fully performed and respondent Assurity's consumer loan
23 company license shall not be revoked in connection with this Consent Order. HOWEVER, if on the expiration of
24 said twenty-four (24) month period a notification to lift the stay or a proceeding to lift the stay is pending by the
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1 Director to revoke Respondent Assurity's consumer loan company license, then those proceedings shall continue
2 according to the terms of this Consent Order, as discussed in paragraph G below.

3 **E. Fine (Partially Stayed).** It is AGREED that Respondents are subject to a fine by the Department in
4 the amount of \$250,000. HOWEVER, it is further AGREED that Respondents shall pay to the Department
5 \$125,000 of the total fine, in the form of a cashier's check made payable to the "Washington State Treasurer"
6 upon entry of this Consent Order, and that the balance of the fine (\$125,000) shall be stayed for a period of
7 twenty-four (24) months from the date of entry of this Consent Order, subject to the Department's authority to lift
8 the stay and impose the balance of the fine (\$125,000) discussed in paragraph G of this Consent Order. It is
9 further AGREED that if, upon expiration of said twenty four (24) month period, the stay has not been previously
10 lifted, and the balance of the fine (\$125,000) has not previously been imposed, and if a notification to lift the stay
11 or a proceeding to lift the stay is not then pending by the Director to impose the balance of the fine (\$125,000),
12 then, in such events, the Department shall consider this paragraph of this Consent Order fully performed and the
13 stayed portion of the fine (\$125,000) will not be collected from Respondents in connection with this Consent
14 Order. HOWEVER, if on the expiration of said twenty-four (24) month period a notification to lift the stay or a
15 proceeding to lift the stay is pending by the Director to impose the balance of the fine (\$125,000), then those
16 proceedings shall continue according to the terms of this Consent Order, as discussed in paragraph G below.

17 **F. Prohibition from Participation in the Industry (Stayed).** It is AGREED that Respondents Calvin
18 B. Hamler and Troy P. Hamler are subject to a prohibition by the Department from participating in the conduct of
19 the affairs of any licensed consumer loan company for a period of five (5) years in any capacity, including but not
20 limited to: (1) any financial capacity whether active or passive or (2) as an officer, director, principal, employee,
21 or loan originator. HOWEVER, it is further AGREED that this five (5) year prohibition shall be stayed for a
22 period of twenty-four (24) months from the date of entry of this Consent Order, subject to the Department's
23 authority to lift the stay and impose the five (5) year prohibition discussed in paragraph G of this Consent Order.
24 It is further AGREED that if, upon expiration of said twenty four (24) month period, the stay has not been
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1 previously lifted, and the five (5) year prohibition has not been previously imposed, and if a notification to lift the
2 stay or a proceeding to lift the stay is not then pending by the Director to impose the five (5) year prohibition, then,
3 in such events, the Department shall consider this paragraph of this Consent Order fully performed and the stayed
4 five (5) year prohibition shall not be imposed in connection with this Consent Order. HOWEVER, if on the
5 expiration of said twenty-four (24) month period a notification to lift the stay or a proceeding to lift the stay is
6 pending by the Director to impose the five (5) year prohibition, then those proceedings shall continue according
7 to the terms of this Consent Order, as discussed in paragraph G below.

8 **G. Lifting of Stay and Revoking License, Imposing Stayed Fines, and Imposing Stay Prohibitions.**

9 It is AGREED that:

- 10 1. If, during the twenty-four (24) month period from the date of entry of this Consent Order,
11 Respondents violate RCW 31.04.027(1), (2), or (10), or WAC 208-620-490, or violate any of the
12 terms and conditions of this Consent Order and the Department accordingly seeks to lift the stay
13 and revoke Respondent Assurity's consumer loan company license, impose the balance of the
14 fine (\$125,000), and impose the five (5) year prohibition against Respondent Calvin B. Hamler or
15 Respondent Troy P. Hamler, the Department will first notify Respondents in writing.
- 16 2. Respondents will be afforded ten (10) business days from the date of receipt of the Department's
17 notification to request in writing an expedited administrative hearing to be held before an
18 Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).
- 19 3. Respondents' request for hearing must be sent to the Department and received by the Department
20 within ten (10) business days of the date of receipt of the Department's notice.
- 21 4. Respondents, in addition to their request for hearing, may provide a written response to include
22 any information pertaining to the alleged noncompliance.
- 23 5. The administrative hearing shall be expedited and follow the timing and processes described in
24 this Consent Order.

- 1 6. If Respondents do not request the expedited hearing within the stated time, the Department
2 immediately will revoke Respondent Assurity's consumer loan company license, impose the
3 balance of the fine (\$125,000), and impose the five (5) year prohibition against Respondent
4 Calvin B. Hamler or Respondent Troy P. Hamler, and pursue whatever action it deems necessary
5 to revoke the license, collect the balance of the fine, and impose the prohibition. Payment must
6 be made by cashier's check payable to the "Washington State Treasurer."
- 7 7. If requested, the hearing will be held within fifteen (15) business days (or as soon as the schedule
8 of the ALJ permits) from the due date of Respondents' request for hearing or from the date of
9 receipt of Respondents' timely request for hearing, whichever is sooner. The parties will
10 accommodate the prompt scheduling of the hearing
- 11 8. The scope and issues of the hearing are limited solely to whether or not Respondents are in
12 violation of RCW 31.04.027(1), (2), or (10), or WAC 208-620-490, or are in violation of any of
13 the terms and conditions of this Consent Order.
- 14 9. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party may file a
15 Petition for Review with the Director of the Department.
- 16 10. The Department's notification will include:
- 17 a. A description of the alleged noncompliance;
- 18 b. A statement that because of the noncompliance, the Department seeks to lift the stay
19 and revoke Respondent Assurity's consumer loan company license, impose the balance
20 of the fine (\$125,000), and impose the five (5) year prohibition against Respondent
21 Calvin B. Hamler or Respondent Troy P. Hamler.
- 22 c. The opportunity for Respondents to contest the Department's determination of
23 noncompliance in an administrative hearing before an ALJ of OAH; and
- 24 d. A copy of this Consent Order. The notification and hearing process provided in this
25 Consent Order applies only to this Consent Order. It is solely provided in the event
Respondents choose to contest the Department's determination of noncompliance.

1 H. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation fee
2 of \$5,000, in the form of a cashier's check made payable to the "Washington State Treasurer," concurrent with
3 entry of this Consent Order.

4 I. **Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented and
5 warranted that they have the full power and right to execute this Consent Order on behalf of the parties
6 represented.

7 J. **Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide
8 by the terms and conditions of this Consent Order may result in further legal action by the Director. In the
9 event of such legal action, Respondents may be responsible to reimburse the Director for the cost incurred in
10 pursuing such action, including but not limited to, attorney fees.

11 K. **Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into
12 this Consent Order, which is effective when signed by the Director's designee.

13 L. **Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this
14 Consent Order in its entirety and fully understand and agree to all of the same.

15 **RESPONDENTS:**

16 Assurity Financial Services, LLC

17 By:

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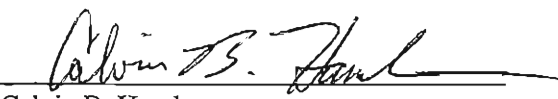
19 Calvin B. Hamler
Owner and Managing Member

7/9/08
Date

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21 Troy P. Hamler
22 Owner and Managing Member

7/9/08
Date

23 

24 Calvin B. Hamler

7/9/08
Date

1 Individually

2 Troy P. Hamler

3 Individually

4 John L. Bley, WSBA No. 15230

5 Attorney at Law

6 Attorney for Respondents

7/9/08

Date

7/10/08

Date

7 DO NOT WRITE BELOW THIS LINE

8 THIS ORDER ENTERED THIS 7th DAY OF August, 2008.

9 Deborah Bortner

10 DEBORAH BORTNER

11 Director

12 Division of Consumer Services

13 Department of Financial Institutions

14 Approved by:

15 James R. Brusselback

16 JAMES R. BRUSSELBACK

Enforcement Chief



25 CONSENT ORDER

C-07-320-08-CO01

Assurity Financial Services, LLC and Calvin B.
Hamler and Troy P. Hamler

1 **B. Background**

2 **1.4** Respondent Assurity is licensed in Washington to conduct business at the following locations:

3 Main Office: 6025 South Quebec Street, Suite 350, Englewood, Colorado 80111.
4 Branch Offices: 14205 SE 36th Street, Suite 100, Bellevue, Washington 98006;
5 1225 West Washington Street, Suite 201, Tempe, Arizona 85281;
4222 East Thomas Road, Suite 320, Phoenix, Arizona 85018; and
770 East Warm Springs Road, Suite 270, Las Vegas, Nevada 89119.

6 **1.5** On or about May 25, 2005, Respondent Assurity became a Federal Housing Authority (FHA) approved
7 mortgage lender, mortgagee number 1845900003, through the U.S. Department of Housing and Urban
8 Development (HUD). On or about June 21, 2005, Respondent Assurity became a U.S. Department of Veteran's
9 Affairs (VA) approved mortgage lender, mortgagee number 239064000. As a licensed Consumer Loan Company,
10 Respondent Assurity provides consumers with residential mortgage loans, and specializes in VA and FHA loans.
11 Respondent Assurity's main source of business derives from direct mail advertising and telephone solicitations.

12 **C. Compliance History**

13 **1.6 State of Arizona.** On or about October 3, 2005, the Arizona Department of Financial Institutions (Arizona
14 DFI) conducted an examination of Respondent Assurity. During the examination, Arizona DFI reviewed
15 Respondent Assurity's advertising practices, including a review of complaints alleging they had engaged in
16 deceptive advertising. On or about January 13, 2006, Arizona DFI notified Respondent Assurity that they intended
17 to issued a Cease and Desist Order against Respondent Assurity and Respondent T.P. Hamler (the Arizona
18 Respondents). The Arizona Respondents entered into negotiations with the Arizona DFI, and on April 10, 2006, the
19 parties resolved nine advertising complaints and settled the matter. The settlement, formalized in a Consent Order,
20 entered numerous Findings of Fact and Conclusions of Law, including that:

- 21 a) The advertisement/solicitations, on their face, create a false impression with regard to the status
22 of refunds due the recipient and do not convey that the correspondence is actually a solicitation of
23 a mortgage loan. The advertisement/solicitations create a false impression that [Arizona
24 Respondents] are a government agency with the ability to provide a cash refund. When a
consumer calls Assurity in response to the advertisement/solicitation, before realizing the
consumer is encountering a solicitation to refinance a mortgage the consumer provides personal
information in anticipation of receiving a cash refund.

25 //

- 1 b) The Arizona Respondents knowingly advertised, displayed, or distributed, or caused or permitted
2 to be advertised, displayed, or distributed, in any manner whatever, a false, misleading, or
3 deceptive statement or representation.
4 c) The Arizona Respondents made a false promise or misrepresentation or concealed an essential or
5 material fact in the course of the mortgage broker business.
6 d) The Arizona Respondents engaged in illegal or improper business practices by circulating,
7 distributing, mailing, disseminating an advertisement that does not comply with the mortgage
8 advertising requirements.

9 The Arizona Respondents were ordered to immediately cease and desist any and all deceptive advertising. In
10 addition, they were required to add language to all advertisements or solicitations subject to the Consent Order
11 stating: **This advertisement is a solicitation by Assurity Financial Services, L.L.C. for a mortgage loan.** The
12 language was required to appear in bold, in the body of the advertisement or solicitation, in an identical font and
13 typeface as the body of the advertisement or solicitation. Without admitting liability, the Arizona Respondents
14 consented to the entry of the Order and paid a \$15,000 civil penalty.

15 **1.7 U.S. Department of Veterans Affairs.** On or about October 11, 2005, the VA's Phoenix Regional Loan
16 Center notified Respondent Assurity that it had received complaints from veterans concerning its advertising. The
17 VA objected to one of Respondent Assurity's direct mail pieces, the "Refund Notice," asserting the solicitation
18 contained false or misleading statements and falsely implied a special relationship with the VA. The VA cautioned
19 Respondent Assurity to cease using the phrases "Refund Notice," "Notice has been served," and "AFS - VA
20 Refund Notice Division," as the use falsely implied the solicitation had been issued by or at the direction of the VA.
21 In addition, the VA objected to Respondent Assurity giving the impression that veterans were commonly
22 overcharged funding fees, when in fact it is very rare. The VA requested that Respondent Assurity amend its
23 solicitations and stop publishing advertising or solicitations "claiming to have a unique relationship with the VA or
24 implying that [the advertisements and solicitations] were issued by or at the direction of the VA."

25 **1.8** On or about November 9, 2005, the VA's Denver Regional Office notified Respondent Assurity that it had
received complaints from veterans concerning the "Refund Notice." The VA considered statements in the
advertisement relating to the VA's Interest Rate Reduction Refinancing Loan (IRRRL) program false. In particular,
the VA was concerned that the advertisement gave the false impression that veterans were often overcharged fees.

1 The VA requested that Respondent Assurity stop advertising the possibility of cash refunds associated with the
2 IRRRL program, amend its solicitations, and stop publishing advertising or solicitations which falsely state the VA
3 requires the establishment of an escrow account for VA mortgages.

4 **1.9 U.S. Department of Housing and Urban Development:** On or about March 29, 2006, HUD's Director of
5 Quality Assurance wrote to Respondent Assurity concerning misrepresentations in its advertising. HUD requested
6 that Respondent Assurity clearly identify in its advertising that the primary service being offered was refinancing
7 existing mortgage loans. Respondent Assurity agreed to revise its solicitation with the disclosure "This is a
8 solicitation for a home loan."

9 **1.10 DFI Examination:** On or about July 31, 2006, the Department of Financial Institutions (Department)
10 conducted an examination of Respondent Assurity. The Department reviewed complaints alleging advertising
11 violations, and found that Respondent Assurity had distributed false and misleading advertising in Washington. In a
12 Report of Examination mailed May 9, 2007, the Department recommended that Respondent Assurity:

- 13 a) Immediately cease sending advertising to Washington consumers that contain notices citing codes
or form numbers that appear like government codes; and
- 14 b) Immediately cease sending advertising to Washington consumers that contain false information.

15 In response to the Report of Examination, on June 14, 2006, Respondent Assurity replied that the advertising issues
16 had been addressed through the complaint process; that they had modified their numbering system to avoid
17 misleading consumers into thinking the mailing came from a government agency; and that they had decided they
18 would no longer use "Refund Division" on their mailers.

19 **1.11 DFI Complaints:** During 2006, the Department received six complaints alleging Respondent Assurity was
20 distributing false and deceptive solicitations in Washington. Three of the complaints concerned the "Refund
21 Notice" discussed above. Beginning on or about March 28, 2006, Respondent Assurity, Respondent C.B. Hamler,
22 and Respondent T.P. Hamler (Respondents) distributed a direct mail solicitation in Washington State. The
23 solicitation was headlined "**REFUND NOTICE**," and included the notation "**Notice has been served.**" The
24 solicitation disclosed a "File Number," a specific dollar amount represented as the "Funding Fee Paid," and
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provided information about the possibility of a cash refund of escrow and/or upfront funding fees. The solicitation requested recipients to call Respondent Assurity "to discuss the details of your VA loan." The solicitation was signed by Chris Hamler, "VA Loan Adviser." On December 19, 2006, the Department mailed Respondent Assurity Resolution and Closure letters referencing the "Refund Notice" solicitation. The Department found that Respondent Assurity violated 9 provisions of the Consumer Loan Act (the Act), including RCW 31.04.027(1) and (2), which make it a violation of the Act for a consumer loan company to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person; and
- (2) Directly or indirectly engage in any unfair or deceptive practice toward any person.

The Department encouraged Respondent Assurity to discontinue using the advertisement in question, and all similar advertisements, unless and until the advertisements were modified to comply with the law. A redacted copy of the solicitation is attached as Exhibit 1.

1.12 FHA Refund Solicitation: Beginning on or about July 10, 2006, Respondents distributed a direct mail solicitation in Washington State. The solicitation was addressed to Washington residents and gave a return address of "Refund Division" at 1001 Pennsylvania Avenue NW in Washington DC. The solicitation included a "FHA #" above the return address, and listed a "File Number" beginning with the letters WAFHA. On the reverse the solicitation noted "Notice to Homeowner" and that it had been sent regarding "Government Insured Home Loan." After another use of Notice, the solicitation asserted Respondents had made several earlier attempts to contact the recipient concerning their federally insured FHA home loan, and requested that the recipient call Respondents "as soon as possible." After a heading Statute of Limitations, the solicitation referenced conditions for a premium refund and a six year statute of limitations. The solicitation warned that HUD was not liable for unclaimed refunds more than six years after the first notice to homeowners. The "File Number" was repeated, and in red ink, a specific dollar amount followed by a paid date was listed. A call date, call time, and caller's initials were entered in blue ink indicating an earlier attempted contact. In much smaller font at the bottom of the solicitation, Respondents noted "This is a solicitation for a home loan." On December 19, 2006, the Department mailed Respondent Assurity a Resolution and Closure letter referencing the above solicitation. The Department found that by distributing the

solicitation in Washington, Respondents violated 7 provisions of the Act, including RCW 31.04.027(1) and (2). The Department encouraged Respondent Assurity to discontinue using the advertisement in question, and all similar advertisements, unless and until the advertisements were modified to comply with the law. A redacted copy of the solicitation is attached as Exhibit 2.

1.13 Tri-Fold VA Solicitation: Beginning on or about September 1, 2006, Respondents distributed a direct mail solicitation in Washington State. The solicitation, printed on an 8^{1/2}" x 14" sheet known as a tri-fold self mailer, was addressed to Washington residents and gave a return address of 1001 Pennsylvania Avenue NW in Washington DC. The address panel of the solicitation listed a number beginning with the letters WAVA. The headline on the top of the first inside panel noted the solicitation was CONFIDENTIAL, provided a form number listed as "WA. Form 137C," listed another number identified as the "VA ID," and provided instructions relating to a **VA REFUND**. The instructions stated that the recipient needed "to contact [Respondents] before 9/21/2006 in order for any action to be taken on your file." Though the solicitation appeared to concern a VA refund, the solicitation noted that the FHA Commissioner would determine the amount of any refund. In red ink, a specific dollar amount followed a heading "Refund Est.," and the "Recipient's ID #," which matched the number on the address side of the solicitation, was listed. In much smaller font on the second inside panel, printed upside down relative to the information on the first inside panel, Respondents disclosed the purpose of the IRRRL program and noted "This is a solicitation for a home loan." On December 19, 2006, the Department mailed Respondent Assurity a Resolution and Closure letter referencing the above solicitation. The Department found that by distributing the solicitation in Washington, Respondent Assurity violated 7 provisions of the Act, including RCW 31.04.027(1) and (2). The Department encouraged Respondent Assurity to discontinue using the advertisement in question, and all similar advertisements, unless and until the advertisements were modified to comply with the law. A redacted copy of the solicitation is attached as Exhibit 3.

1.14 ARM Adjustment Solicitation: Beginning on or about November 27, 2006, Respondents distributed a direct mail solicitation in Washington State. The solicitation was addressed to Washington residents and gave a return address of "Refund Division" at 1001 Pennsylvania Avenue NW in Washington DC. The solicitation stated

1 "Notice to Homeowner" and that it had been sent regarding "Adjustable Rate Home Loan." The solicitation
2 asserted that Respondents were trying to contact the recipient concerning the interest rate and mortgage payment
3 changes on their home loan, and requested that the recipient call Respondents "as soon as possible." The
4 solicitation provided a "File Number," and in red ink, a specific dollar amount followed by a paid date. A call date,
5 call time, and caller's initials were entered in blue ink indicating an earlier attempted contact. In much smaller font
6 at the bottom of the solicitation, Respondents noted "This is a solicitation for a home loan." On January 26, 2007,
7 the Department mailed Respondent Assurity a Resolution and Closure letter referencing the above solicitation. The
8 Department found that by distributing the solicitation in Washington, Respondent Assurity violated 11 provisions of
9 the Act, including RCW 31.04.027(1) and (2). The Department instructed Respondent Assurity to discontinue using
10 the advertisement in question, and all similar advertisements, unless and until the advertisements were modified to
11 comply with the law. A redacted copy of the solicitation is attached as Exhibit 4.

12 **1.15 Assurity's Response:** On or about March 22, 2007, the Department received a response from Respondent
13 Assurity disputing the Department's findings in the six Resolution and Closure letters. On April 3, 2007, the
14 Department replied, stating that the determinations set forth in the Resolution and Closure letters would stand, and
15 summarizing the Department's position that when viewed as a whole, each solicitation "presented either the
16 appearance of an official government notice or mailing and/or was misleading and deceptive to consumers."

17 **D. Recent Advertising**

18 **1.16 False Pleading – FHA Refund:** Beginning on or about November 14, 2006, Respondents caused a
19 solicitation for residential home mortgages to be distributed in Washington State. The solicitation was addressed to
20 Washington residents and gave a return address of "AFS Refund Division" at 1001 Pennsylvania Avenue NW in
21 Washington, DC. The solicitation contained line numbers and lines down the left margin, similar to the line
22 numbers and lines on this document, had what appeared to be a caption with a "Case No.," and gave the overall
23 appearance of being a legal pleading. The solicitation stated that HUD had a positive balance in a prepaid Mortgage
24 Insurance Premium (MIP) account for FHA loans originated from 2001 through 2006, and that most individuals
25 who paid for MIP were eligible for a refund. The solicitation indicated that the recipient had paid a specific amount

1 for MIP, that the recipient had a positive balance in their MIP account, and that Respondents could assist the
2 recipient of the solicitation in getting a refund. The solicitation was signed by Chris Hamler, "FHA Refund
3 Specialist." In much smaller font at the bottom of the solicitation, Respondents noted "This is a solicitation for a
4 home loan." The Department received one complaint concerning this solicitation. A redacted copy of the
5 solicitation is attached as Exhibit 5.

6 **1.17 ARM Adjustment:** Beginning on or about September 1, 2007, Respondents caused a solicitation for
7 residential home mortgages to be distributed in Washington State. The solicitation was addressed to Washington
8 residents and gave a return address of "ARM Programs Division" at 14205 SE 36th Street in Bellevue, Washington.
9 The solicitation included a "FILE NUMBER" in the top right corner, and provided a specific dollar amount after
10 "AMT PD." The solicitation indicated that it was in regard to the recipient's "REQUESTED MORTGAGE LOAN
11 ADJUSTMENT UPDATE." The solicitation stated that the recipient had recently been solicited by Respondents
12 for an update on an adjustable rate mortgage (ARM) loan held by the recipient; that the recipient had not responded
13 to the previous solicitation; that the recipient's interest rate on their ARM was still in effect; and that the interest rate
14 "will likely adjust to a higher rate." Respondents requested contact if the recipient was attempting to avoid an
15 increase in the recipient's interest rate and monthly payment. Respondents requested the contact "**so your records
16 can be properly updated.**" Continuing in bold print, Respondents indicated that the recipient may be entitled to a
17 refund of "**a portion of the monies you paid when your loan closed.**" In much smaller font at the bottom of the
18 solicitation, Respondents noted "This is a solicitation for a home loan." The Department received nine complaints
19 concerning this solicitation. A redacted copy of the solicitation is attached as Exhibit 6.

20 **1.18 ARM Tri-Fold:** Beginning on or about September 1, 2007, Respondents caused a solicitation for residential
21 home mortgages to be distributed in Washington State. The solicitation, printed on an 8^{1/2}" x 14" sheet of paper
22 known as a tri-fold self mailer, was headlined "HOMEOWNER ACTION REQUIRED," was addressed to
23 Washington residents, and gave a return address of 14205 SE 36th Street in Bellevue, Washington. Between the
24 headline and the address Respondents printed "Claim #." On the inside panel, the solicitation included the name of
25 the recipient's original mortgage lender, and asserted that Respondents' earlier solicitations concerning the

1 recipient's ARM "have gone unanswered." The solicitation indicated that to avoid an adjustment in their interest
2 rate, changes to their monthly payment, decreased cash flow, and increased costs of home ownership, it was
3 important the recipient contact Respondents by a specific date. In much smaller font on the third panel,
4 Respondents provided information about ARMs, disclosed "This is a solicitation for a home loan," and noted that
5 Respondent Assurity was not affiliated with the recipient's lender. The Department received one complaint
6 concerning this solicitation. A redacted copy of the solicitation is attached as Exhibit 7.

7 **1.19 HUD Refund Solicitation:** Beginning on or about September 21, 2007, Respondents caused a solicitation for
8 residential home mortgages to be distributed in Washington State. The top line of the solicitation's header reads:

9 **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FHA MORTGAGE #1234567890**

10 The solicitation indicated it was from the "Assistant Advisor for Consumer Advocacy – Assurity Consumer
11 Advocacy Division," included a "Circular" number, noted "PREVIOUS EDITIONS OBSOLETE," and gave the
12 overall appearance of being a letter from HUD. The letter was signed by Chris Hamler, "Assistant Advisor for
13 Consumer Advocacy – Assurity Consumer Advocacy Division." The solicitation stated that HUD had announced
14 that \$250 million in MIP refunds were due to over 348,000 homeowners, and that FHA loans originated after
15 September 1, 1983, may be eligible for full or partial refund. The solicitation referenced a six year statute of
16 limitations, and warned that HUD was not liable for unclaimed refunds more than six years after the first notice to
17 homeowners. The solicitation indicated that the recipient was eligible for a full or partial MIP refund, and provided
18 a file number and a specific dollar amount designated as the estimated MIP paid. In much smaller font at the
19 bottom of the solicitation, Respondents noted "This is a solicitation for a home loan." The Department received one
20 complaint concerning this solicitation. A redacted copy of the solicitation is attached as Exhibit 8.

21 **1.20 VA IRRRL Refund:** Beginning on or about August 1, 2007, Respondents caused a solicitation for
22 residential home mortgages to be distributed in Washington State. The solicitation was addressed to Washington
23 residents and gave a return address of "Government Loans Programs Division" at 14205 SE 36th Street in Bellevue,
24 Washington. The solicitation included a "FILE NUMBER" in the top right corner, provided a specific dollar
25 amount after "AMT PD," and indicated that it was in regard to the recipient's "REQUESTED MORTGAGE LOAN

1 REFUND UPDATE.” The solicitation stated that the recipient had recently been solicited by Respondents for an
2 update on the status of a refund pertaining to a VA loan held by the recipient, that the recipient had not responded to
3 the previous solicitation, and that the recipient’s VA loan was still in effect. Respondents requested that the
4 recipient contact Respondents if they were choosing “not to attempt to claim monies that may be owed to you...”
5 Respondents requested the contact “**so your records can be properly updated.**” In much smaller font at the
6 bottom of the solicitation, Respondents provided information about VA loans and the IRRRL program, disclosed
7 “This is a solicitation for a home loan,” and noted that Respondent Assurity was not a part of the U.S. Department
8 of Veteran’s Affairs. The Department received one complaint concerning this solicitation. A redacted copy of the
9 solicitation is attached as Exhibit 9.

10 **1.21 ARM Refund:** Beginning on or about December 1, 2007, Respondents caused a solicitation for residential
11 home mortgages to be distributed in Washington State. The solicitation was headlined “**Refund Notice**” and was
12 addressed to Washington residents. The solicitation included a “File Number” and disclosed a “Potential Refund”
13 of \$300 or more in the top right corner. The solicitation provided information about press reports that up to 30% of
14 ARMs contained significant errors in principal and interest calculations, and stated that the errors resulted in
15 significant overcharges ranging from \$300 up to \$38,000. The solicitation stated that average errors in individual
16 mortgages range from \$700 to \$1,400. The solicitation indicated that the recipient’s ARM had been “identified due
17 to a high overcharge risk assessment,” and stated that a “Refund Audit Specialist” would assist the recipient in
18 determining the correct principal and interest payment and assist the recipient in collecting any refund due. Chris
19 Hamler signed one version of the solicitation on behalf of Respondents; Justin McHood signed another. In much
20 smaller font at the bottom of the solicitation, Respondents provided the names of publications that had published
21 stories on ARM calculation errors, and noted that “Your consultation may include a solicitation for a home loan
22 and/or services associated with your current loan.” The Department received five complaints concerning this
23 solicitation. A redacted copy of the solicitation is attached as Exhibit 10.

24 //

25 //

1.22 Respondents did not adequately disclose that a primary purpose of their mailers was to solicit consumers for a residential mortgage loan.

1.23 In many of their solicitations, Respondents misrepresented that recipients of the solicitations had loan files in Respondents' possession; that mortgage loan adjustment updates had been requested by the recipients; that the recipients had a claim with Respondents; that the recipients were required to take some sort of action; and that recipients had failed to respond to an earlier solicitation.

1.24 In many of their solicitations concerning federally insured FHA home loans, Respondents used the word "notice" and referenced a six year statute of limitations on refunds after receipt of notice. Respondents omitted to state that Respondents' "notice" did not constitute the required FHA or HUD notice, and did not disclose that the statute of limitations does not begin until the FHA or HUD have provided notice.

1.25 Respondents did not notify the Director in writing within twenty days of the filing of the Consent Order with the Arizona DFI.

E. On-Going Investigation

1.26 The Department's investigation into the alleged violations of the Act by Respondents continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Artifice to Defraud or Mislead: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 31.04.027(1) by directly employing an artifice to defraud or mislead consumers with false and misleading advertising.

2.2 Unfair and Deceptive Practice: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 31.04.027(2) by engaging in an unfair and deceptive practice toward consumers by the use of false and misleading advertising.

2.3 Violation of Federal Trade Commission Act: Based on the Factual Allegations set forth above, Respondents are in apparent violation of RCW 31.04.027(10) and WAC 208-620-505 by committing unfair or deceptive acts or practices in violation of the Federal Trade Commission Act Act, 15 U.S.C. §§41-58, as amended.

1 **2.4 Failure to Notify of Material Litigation:** Based on the Factual Allegations set forth above, Respondents are
2 in apparent violation of WAC 208-620-490(3)(d) for failing to notify the Director in writing within twenty days of
3 the filing of the Consent Order with the Arizona DFI.
4

5 **III. AUTHORITY TO IMPOSE SANCTIONS**

6 **3.1 Authority to Revoke Licenses:** Pursuant to RCW 31.04.093(3)(b), the Director may revoke a license if a
7 licensee violates any provision of the Act either knowingly or without exercise of due care.

8 **3.2 Authority to Prohibit from the Industry:** Pursuant to RCW 31.04.093(6)(e), the Director may issue an
9 order prohibiting from participation in the affairs of any licensee, any officer, principal, employee, or any other
10 person subject to the Act for any violation of RCW 31.04.027.

11 **3.3 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4)(a), the Director may impose fines of up to one
12 hundred dollars per day upon the licensee for any violation of the Act.

13 **3.4 Authority to Collect Investigation Fee:** Pursuant to RCW 31.04.145(3), every licensee investigated by the
14 Director or the Director's designee shall pay for the cost of the investigation.
15

16 **IV. NOTICE OF INTENT TO ENTER ORDER**

17 Respondents' violations of the provisions of chapter 31.04 RCW, as set forth in the above Factual Allegations,
18 Grounds for Entry of Order, and Authority to Impose Sanctions constitute a basis for the entry of an Order under
19 RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

20 **4.1** Respondent Assurity Financial Service, LLC's primary and branch licenses to conduct the business of a
21 Consumer Loan Company be revoked;

22 **4.2** Respondents Calvin B. Hamler and Troy P. Hamler be prohibited from participation in the conduct of the affairs
23 of any licensed consumer loan company or mortgage broker, in any manner, for a period of five (5) years;

24 **4.3** Respondents Assurity Financial Service, LLC, Calvin B. Hamler, and Troy P. Hamler jointly and severally pay
25 a fine of \$250,000 for the violations set forth above; and

1 4.4 Respondents Assurity Financial Service, LLC, Calvin B. Hamler, and Troy P. Hamler jointly and severally pay
2 an investigation fee in the amount of \$4,830.


3
4 **V. AUTHORITY AND PROCEDURE**

5 This Statement of Charges and Notice of Intent to Enter an Order to Revoke Licenses, Prohibit from Industry,
6 Impose Fines, and Collect Investigation Fees (Statement of Charges) is entered pursuant to the provisions of
7 RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of chapter
8 34.05 RCW (the Administrative Procedure Act). Respondents may make a written request for a hearing as set forth
9 in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
10 Statement of Charges.


11
12 Dated this 5th day of March, 2008.

13
14 
15 DEBORAH BORTNER
16 Director, Division of Consumer Services
17 Department of Financial Institutions

18 Presented by:

19 
20 ANTHONY W. CARTER
21 Enforcement Attorney

22 Approved by:

23 
24 JAMES R. BRUSSELBACK
25 Enforcement Chief

