

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

ADMINISTRATIVE PROCEEDING
File No. 2023-CFPB-0006

In the Matter of:

CONSENT ORDER

BANK OF AMERICA, N.A.

The Consumer Financial Protection Bureau (Bureau) has reviewed the practices of Bank of America, N.A. (Respondent or the Bank) related to assessing multiple non-sufficient funds fees (NSF Fees) on the same transaction and has identified the following law violation: the Bank committed unfair acts and practices when it charged consumers repeat NSF Fees on transactions resubmitted to the Bank for payment after they were initially declined (often referred to as “re-presenting” transactions). Under §§ 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I.

Overview

1. Until 2021 and 2022, respectively, Respondent assessed consumers \$35 NSF Fees each time the Respondent returned as unpaid a re-presented Automated Clearing House (ACH) transaction or check, despite already having charged consumers an NSF Fee on the initial returned transaction (Re-Presentation NSF Fees).
2. Respondent ceased assessing these Re-Presentation NSF Fees on ACH transactions in November 2021 and ceased assessing them on checks, along with all other NSF Fees, in February 2022. The Bank's efforts to reduce fees, including NSF Fees, has led to the Bank charging customers millions of dollars less in fees.
3. From September 2018 until February 2022, Respondent generated hundreds of millions of dollars from its practice of charging multiple NSF Fees on re-presented checks or ACH transactions. These fees substantially harmed consumers.
4. Consumers could not reasonably understand that they could be assessed a new \$35 fee each time Respondent declined to pay the same ACH transaction or check. Even if some consumers did understand that Respondent assessed these fees, they still could not reasonably avoid them

or otherwise protect their interests against incurring Re-Presentation NSF Fees.

II.

Jurisdiction

5. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565.

III.

Stipulation

6. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated June 28, 2023 (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.

IV.

Definitions

7. The following definitions apply to this Consent Order:

- a. “Affected Consumers” includes all consumers who were assessed any Re-Presentation NSF Fees between September 1, 2018 and February 18, 2022.
- b. “Board” means Respondent’s duly-elected and acting Board of Directors.
- c. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
- d. “NSF Fees” mean non-sufficient funds fees that Respondent assessed when it declined to pay or returned as unpaid any transaction.
- e. “Regional Director” means the Regional Director for the Southeast Region for the Office of Supervision Examination for the Consumer Financial Protection Bureau, or his or her delegate.
- f. “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 V of this Consent Order.
- g. “Relevant Period” is September 1, 2018 until February 18, 2022.

- h. “Re-Presentation NSF Fees” means an NSF Fee assessed to a consumer for the same check or ACH transaction that had been previously declined or returned unpaid and assessed an NSF Fee.
- i. “Respondent” means Bank of America, N.A. and its successors and assigns.
- j. “Unreimbursed” means Re-Presentation NSF Fees assessed and collected by Respondent during the Relevant Period and not yet refunded in full to Affected Consumers.

V.

Bureau Findings and Conclusions

The Bureau finds the following:

- 8. Respondent is a national bank headquartered in Charlotte, North Carolina. As of March 31, 2023, Respondent had \$2.4 trillion in consolidated total assets.
- 9. Respondent is a “covered person” under 12 U.S.C. § 5481(6).

Respondent’s Re-Presentation NSF Fee Practices

- 10. When a consumer writes a check or authorizes an ACH transaction to a merchant or other payee using their deposit account at Respondent, the merchant or other payee may then present that check or ACH authorization to Respondent for payment. If a consumer does not have sufficient funds in

their account to pay for the transaction, Respondent must decide whether to pay the transaction.

11. If Respondent does not pay the merchant or other payee when presented with a transaction for an account with insufficient funds, Respondent may—according to the terms of its deposit agreements in effect before February 2022—assess a \$35 NSF Fee to the consumer.
12. Some merchants “re-present” these returned transactions—that is, they again try to receive payment—often multiple times. Merchants can re-present an ACH transaction as an ACH transaction, re-present a check as a check, or re-present a check as an ACH transaction.
13. During the Relevant Period, Respondent assessed NSF Fees on ACH and check transactions that it returned unpaid even though it had already assessed a \$35 NSF Fee for the same ACH or check transaction that it had previously returned unpaid (*i.e.*, Re-Presentation NSF Fees). Respondent would assess these Re-Presentation NSF Fees potentially as soon as the next day after the initial transaction.
14. From September 2018 until February 2022, Respondent generated hundreds of millions of dollars in Re-Presentation NSF Fees.

15. Respondent ceased assessing Re-Presentation NSF Fees on ACH transactions in November 2021 and ceased assessing them on checks, along with all other NSF Fees, in February 2022.
16. Respondent has already waived, refunded, or agreed to refund approximately tens of millions of dollars in Re-Presentation NSF Fees that it assessed during the Relevant Period, and has charged off tens of millions of dollars more in Re-Presentation NSF Fees that it assessed during the Relevant Period but did not collect after it closed consumers' accounts.

**Respondent's Assessment of Re-Presentation NSF Fees
During the Relevant Period Was Unfair**

17. Respondent had a policy of assessing Re-Presentation NSF Fees during the Relevant Period.
18. Respondent's policy of assessing Re-Presentation NSF Fees caused substantial injury because each fee cost \$35. Consumers paid hundreds of millions of dollars in Re-Presentation NSF Fees during the Relevant Period.
19. Consumers could not reasonably avoid the Re-Presentation NSF Fees assessed under Respondent's policy. Whether or not consumers expected or understood that Respondent would charge a new \$35 fee each time it returned the same transaction, they were not reasonably able to avoid the fee because they did not know when merchants would re-present transactions, which could occur as soon as the next day. Nor could consumers generally

stop payments or revoke authorizations on transactions easily or in time, and by attempting to stop payment they would incur substantial additional costs, even if the stop payment was untimely or otherwise unsuccessful. Further, the amount that consumers owed increased with each subsequent NSF Fee, adding to the difficulty for some consumers of avoiding the injury caused by these fees.

20. The substantial injury caused by Respondent's policy of assessing Re-Presentment NSF Fees was not outweighed by countervailing benefits to consumers or competition. Charging Re-Presentment NSF Fees provided little to no benefit to consumers. Moreover, Re-Presentment NSF Fees serve no deterrent purposes relevant to the integrity of the financial system since consumers cannot reasonably avoid them.
21. Respondent's assessment of Re-Presentment NSF Fees constituted unfair acts or practices in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531(a) and (c)(1), and 5536(a)(1)(B).

CONDUCT PROVISIONS

VI.

Prohibited Conduct

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

22. 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 sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, and are prohibited from assessing Re-Presentation NSF Fees.

VII.

Role of the Board

IT IS FURTHER ORDERED that:

23. Respondent's Board, or a committee thereof, will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with the laws that the Bureau enforces, including Federal consumer financial laws and this Consent Order.

24. Respondent's Board, or a committee thereof, must review all plans and reports required by this Consent Order, and any submissions to the Bureau prior to such submission.
25. One year after the Effective Date, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, or a committee thereof, the accuracy of which is sworn to under penalty of perjury, and which, at a minimum:
 - a. Describes the steps that Respondent has taken to reasonably assess whether Respondent is complying with the Redress Plan and each applicable paragraph and subparagraph of the Order;
 - b. Describes in detail whether and how Respondent has complied with the Redress Plan and each applicable paragraph and subparagraph of the Order, including the manner of verification of such compliance and any corrective actions taken to remedy potential non-compliance with the applicable requirement, paragraph, or subparagraph; and
 - c. Attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.
26. Respondent's Board, or a committee thereof, must:

- a. Authorize whatever actions are necessary for Respondent to assess whether Respondent is complying with the Redress Plan and each applicable paragraph and subparagraph of the Order;
- b. Authorize whatever actions, including corrective actions, are necessary for Respondent to fully comply with the Redress Plan and each applicable paragraph and subparagraph of the Order; and
- c. Require timely reporting by management to Respondent's Board, or a committee thereof, on the status of compliance obligations.

MONETARY PROVISIONS

VIII.

Order to Pay Redress

IT IS FURTHER ORDERED that:

27. Respondent must redress all Affected Consumers for all Unreimbursed Re-presentment NSF Fees, providing not less than \$80,400,000 in total consumer redress.
28. Respondent must reimburse Affected Consumers by direct deposit whenever feasible. Whenever direct deposit is not feasible, Respondent must reimburse Affected Consumers by paper check.
29. Within 90 days of the Effective Date, Respondent must submit to the Regional Director for review and non-objection a comprehensive written

plan for providing redress consistent with this Consent Order (Redress Plan). The Regional Director will have the discretion to make a determination of non-objection to the Redress Plan or direct Respondent to revise it. If the Regional Director directs Respondent to revise the Redress Plan, Respondent must revise and resubmit the Redress Plan to the Regional Director within 30 days. After receiving notification that the Regional 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.

30. The Redress Plan must:
 - a. Describe the methodology Respondent proposes to use to identify Affected Consumers and the amount of redress to be provided to each Affected Consumer;
 - b. Identify the amount of redress that would be provided to each Affected Consumer under the methodology described in subsection (a);
 - c. Describe how Respondent proposes to remediate Affected Consumers, including how Respondent proposes to identify current mailing addresses for Affected Consumers for whom redress by direct deposit is not feasible, which must include reasonable efforts to identify

current addresses prior to mailing redress checks and once any redress checks are returned as undeliverable;

- d. Specify that Respondent will provide a notification explaining that Respondent's redress payment is in accordance with the terms of this Consent Order and provide an exemplar of this notification; and
 - e. In the event that redress to Affected Consumers is less than the amount identified in Paragraph 27, specify a method for providing alternative consumer redress to satisfy Respondent's obligations to pay the redress amount identified in Paragraph 27.
31. Respondent must provide the redress and notification described in this section within 60 days of the Regional Director's non-objection to the Redress Plan.
32. Within 30 days of the completion of the Redress Plan, if the amount of redress provided to consumers is less than the redress amount identified in Paragraph 27, 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 redress provided to consumers and the amount of redress identified in Paragraph 27.
33. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. 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.

Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

34. Respondent may not condition the payment of any redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.

IX.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

35. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section V of this Consent Order, Respondent must pay a civil money penalty of \$60,000,000 to the Bureau.
36. 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.
37. 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).

38. Respondent, for all purposes, must 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.
39. 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.

X.

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

40. 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.
41. 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.
42. Respondent acknowledges that its Taxpayer Identification Number, which Respondent previously submitted to the Bureau, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
43. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional

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.

COMPLIANCE PROVISIONS

XI.

Reporting Requirements

IT IS FURTHER ORDERED that:

44. 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.
45. Within 7 days of the Effective Date, Respondent must:

- a. Designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Respondent; and
 - b. Designate at least one telephone number and email, physical, and postal addresses as points of contact for consumers with inquiries related to consumer relief under the Consent Order.
46. Respondent must report any change in the information required to be submitted under Paragraph 44 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

XII.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

47. Within 7 days of the Effective Date, Respondent must submit to the Regional Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
48. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its Board members and senior executive officers, as well as to any business leaders and managers who have responsibilities related to the subject matter of the Consent Order.

49. 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 XI, any future Board members and senior executive officers, as well as to any business leaders and managers who will have responsibilities related to the subject matter of the Consent Order within 10 days of assuming their responsibilities.
50. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, within 45 days of delivery, from all persons receiving a copy of this Consent Order under this Section.
51. Ninety days from the Effective Date, Respondent must submit to the Bureau a list of all persons and their titles to whom this Consent Order has been delivered under the Section of this Order titled “Order Distribution and Acknowledgment” and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 50.

XIII.

Recordkeeping

IT IS FURTHER ORDERED that:

52. Respondent must create and retain 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; and

- b. All documents and records pertaining to the requirements of this Consent Order.

- 53. Respondent must make the documents identified in Paragraph 52 available to the Bureau upon the Bureau's request.

XIV.

Notices

IT IS FURTHER ORDERED that:

- 54. 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 Bank of America, N.A.*, File No. 2023-CFPB-0006," and send them to the following email Enforcement_Compliance@cfpb.gov addressed as follows:

ATTN: Regional Director, Bureau Southeast Region
Consumer Financial Protection Bureau

XV.

Compliance Monitoring

IT IS FURTHER ORDERED that:

- 55. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information,

which must be made under penalty of perjury; provide sworn testimony; or produce documents.

56. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in Section V; or (c) compliance with the Consent Order. The person interviewed may have counsel present.
57. 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.

XVI.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

58. 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 Regional Director.
59. The Regional 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 Regional Director must be in writing.

ADMINISTRATIVE PROVISIONS

XVII.

IT IS FURTHER ORDERED that:

60. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as described in Paragraph 61. Further, for the avoidance of doubt, the provisions of this Consent Order do not bar, estop, or otherwise prevent any other person or governmental agency from taking any action against Respondent.
61. 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 V 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.

62. 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.
63. This Consent Order will terminate on the later of 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent, if such action is initiated within 5 years of the Effective Date. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. 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.
64. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted. Deadlines that fall on a weekend or federal holiday shall carry over to the following business day.

65. Should Respondent seek to transfer or assign 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.
66. 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 CFPA, 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.
67. 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.
68. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, its Executives, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 10th day of July, 2023.

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau