

Exhibit 72

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

ADMINISTRATIVE PROCEEDING
File No. 2022-CFPB-0004

In the Matter of:

CONSENT ORDER

BANK OF AMERICA, N.A.

The Consumer Financial Protection Bureau (Bureau) has reviewed the administration of unemployment insurance benefit prepaid debit cards by Bank of America, N.A. (Respondent, as defined below) and has identified the following law violations in connection with Respondent's treatment of unemployment insurance benefit recipients who filed notices of error concerning alleged unauthorized electronic fund transfers (EFTs): (1) Respondent engaged in unfair acts or practices by determining no error had occurred and freezing cardholder accounts based solely on the results of Respondent's automated Fraud Filter, in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a) and (c), 5536(a)(1)(B); (2) Respondent failed to conduct reasonable investigations of unemployment insurance benefit prepaid

debit cardholders' notices of error, in violation of Sections 908 and 909 of the Electronic Fund Transfer Act (EFTA), 15 U.S.C. §§ 1693f and 1693g, and Section 1005.11 of Regulation E; and (3) Respondent engaged in abusive acts or practices by retroactively applying its automated Fraud Filter to reverse permanent credits for unemployment insurance benefit prepaid debit cardholders whose notices of error Respondent had previously investigated and paid, in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531(a) and (d)(2)(B), 5536(a)(1)(B). The Bureau has also identified that: (4) Respondent engaged in unfair acts or practices by impeding unemployment insurance benefit prepaid debit cardholders' efforts to file notices of error and seek liability protection from unauthorized EFTs, in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531(a) and (c), 5536(a)(1)(B); and (5) Respondent failed to timely investigate and resolve unemployment insurance benefit prepaid debit cardholders' notices of error concerning alleged unauthorized EFTs, in violation of EFTA, 15 U.S.C. § 1693f(a), (c), and Section 1005.11(c)(2)-(3) of Regulation E. Under Sections 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.

Jurisdiction

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, and Section 918(a)(5) of EFTA, 15 U.S.C. § 1693o(a)(5).

II.

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated July 13, 2022 (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 Sections 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. “Affected Consumers” means a consumer who during the Relevant Period: (1) qualified for and received government unemployment insurance benefit payments electronically through prepaid debit cards issued by Respondent; (2) filed a notice of error concerning alleged

unauthorized EFTs with Respondent; and (3) for whom Respondent incorrectly determined, based solely on the results of Respondent's Fraud Filter, that no error occurred, and, as a result, Respondent (i) denied the consumer's error claim or reversed permanent credits previously granted to the consumer and (ii) froze or, after March 17, 2021, blocked the consumer's unemployment insurance benefit prepaid debit card account.

- b. "Board" means Respondent's duly-elected and acting Board of Directors or a committee thereof.
- c. "Consequential Harm" means the financial harm Affected Consumers incurred due to the time their unemployment insurance benefit prepaid debit card account remained frozen or blocked after Respondent incorrectly determined that no error occurred on the consumer's unemployment insurance benefit prepaid debit card account, based solely on the results of Respondent's Fraud Filter.
- d. "EDD" means the California Employment Development Department.
- e. "EDD Cardholder" means a consumer who received an EDD Prepaid Debit Card.
- f. "EDD Prepaid Debit Cards" means Respondent-issued and Respondent-administered unemployment insurance benefit prepaid debit cards linked to individual EDD Prepaid Debit Card Accounts.

- g. “EDD Prepaid Debit Card Accounts” means depository accounts maintained by Respondent for the Prepaid Card Unemployment Insurance Benefits Program and holding unemployment insurance and other public benefits from EDD for consumers.
- h. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
- i. “Electronic Fund Transfer” or “EFT” means “any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.” 15 U.S.C. § 1693a(7).
- j. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.
- k. “Error Resolution Investigation” means the procedures and duties required of financial institutions as described in 12 C.F.R. § 1005.11.
- l. “Fraud Filter” means the automated fraud detection process that Respondent used to investigate unemployment insurance benefit prepaid card notices of error between September 28, 2020 and June 8, 2021.

- m. “OCC Consent Order” means the Consent Order issued by the Office of the Comptroller of the Currency against Respondent on July 14, 2022.
- n. “Prepaid Card Unemployment Insurance Benefits Program” means the program through which Respondent issued and administered prepaid debit cards and associated accounts containing unemployment insurance benefits granted to consumers in certain states.
- o. “Regional Director” means the Regional Director for the Southeast Region for the Office of Supervision for the Consumer Financial Protection Bureau, or his or her delegate.
- p. “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.
- q. “Relevant Period” means March 1, 2020 to June 8, 2021.
- r. “Respondent” means Bank of America, N.A. and its successors and assigns.

IV.

Bureau Findings and Conclusions

The Bureau finds the following:

4. Respondent is a national bank headquartered in Charlotte, North Carolina with branches and ATMs located in 38 states and the District of Columbia. As of December 31, 2021, Respondent had \$2.5 trillion in consolidated assets, which makes it an insured depository institution with assets greater than \$10,000,000,000 within the meaning of 12 U.S.C. § 5515(a).
5. Respondent is a “covered person” under 12 U.S.C. § 5481(6) because it “engages in offering or providing a consumer financial product or service,” including by engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by consumers primarily for personal, family, or household purposes. 12 U.S.C. § 5481(15)(A)(iv).
6. Respondent is a “financial institution” under EFTA and Regulation E because it is a national bank holding consumer deposit accounts. 15 U.S.C. § 1693a(9).
7. During the Relevant Period, Respondent had contracts with 12 states, including California, to deliver unemployment insurance and other government benefit payments to consumers through prepaid debit cards and accounts.
8. For each consumer deemed eligible by the relevant state unemployment agency who elected to receive their benefit payments through a prepaid debit

card during the Relevant Period, the state notified Respondent, funded a prepaid debit card account with Respondent, and Respondent issued a prepaid debit card to the consumer.

9. In each of those states, Respondent was responsible for loading unemployment and other government benefit payments onto prepaid debit cards and for servicing consumers' prepaid debit card accounts.
10. The onset of the COVID-19 pandemic in March 2020 led to a surge in consumers seeking unemployment insurance benefits. These programs provide a temporary partial wage or income replacement for consumers who, through no fault of their own, have lost their jobs. Payments are made directly to unemployed consumers, so that consumers can continue to pay for the necessities of life while they search for work. The national unemployment rate in April 2020 was 14.7%, and it remained at significantly elevated levels through 2020. Millions of consumers were newly unemployed. They sought the benefits to which they were legally entitled via Respondent's prepaid debit cards.

Respondent's Strategy for Prepaid Debit Cardholders Filing Notices of Error and Seeking Liability Protection

11. When notified by a consumer of an error such as an unauthorized EFT on their account, a financial institution must investigate the alleged error,

determine whether an error has occurred, and report the results of its investigation and determination to the consumer pursuant to the requirements in Sections 908 and 909 of EFTA, 15 U.S.C. §§ 1693f and 1693g, and Section 1005.11 of Regulation E.

12. From January 2020 until late-September 2020, upon receiving a notice of error from an unemployment insurance benefit prepaid debit cardholder concerning alleged unauthorized EFTs, Respondent would conduct an investigation that could include, among other steps: comparing the location of the transaction with the consumer's residence or habitual transactions; accessing ATM camera footage (if the alleged unauthorized activity occurred at a Respondent ATM); and contacting the cardholder for further information.
13. Following a surge in notices of error filed by unemployment insurance benefit prepaid debit cardholders nationwide throughout the summer of 2020, Respondent changed its practices for investigating unemployment insurance benefit prepaid debit cardholder notices of error.
14. Under its new strategy, which Respondent implemented on September 28, 2020 for all of its state unemployment insurance benefit prepaid programs, Respondent only ran cardholders' notices of error concerning alleged unauthorized EFTs through its newly developed automated Fraud Filter, and

for notices of error that met any indicator used by the Fraud Filter ceased taking the steps described in Paragraph 12, above, as part of its investigation.

15. Beginning on September 28, 2020, for notices of error submitted by unemployment insurance benefit prepaid debit cardholders concerning alleged unauthorized EFTs that met any of the three indicators used by Respondent's new Fraud Filter, Respondent automatically determined that no error had occurred.
16. Between September 28, 2020 and June 8, 2021, for notices of error submitted by unemployment insurance benefit prepaid debit cardholders concerning alleged unauthorized EFTs that met any of the three indicators used by Respondent's Fraud Filter, along with determining no error had occurred, Respondent froze or, after March 17, 2021, blocked the consumer's prepaid debit card account.
17. The only exception was from October 4, 2020 through December 2, 2020, when unemployment insurance benefit prepaid debit card accounts flagged by Respondent's new Fraud Filter were not frozen as Respondent had intended. After Respondent discovered the issue, it froze those flagged unemployment insurance benefit prepaid debit card accounts on or about December 17, 2020, excluding accounts where a reconsideration request

from a consumer was pending or where Respondent had reversed its initial determination that no error had occurred.

18. A consumer whose unemployment insurance benefit prepaid debit card account is frozen cannot access the government benefits in their account.
19. Respondent also will not accept new benefits payments for deposit into a frozen unemployment insurance benefit prepaid debit card account.
20. When Respondent blocks an unemployment insurance benefit prepaid debit card, no transactions are permitted. But unlike an account freeze, Respondent permits cardholders with blocks on their unemployment insurance benefit prepaid debit card to verify their identity directly with Respondent. Upon verification, Respondent releases the block, and the unemployment insurance benefit prepaid debit card becomes usable again.
21. Before implementing the Fraud Filter on September 28, 2020, Respondent knew, or should have known, that the Fraud Filter would, in certain cases, incorrectly determine that no error had occurred.
22. Likewise, before implementing the Fraud Filter, Respondent knew, or should have known, that not all unemployment insurance benefit prepaid accounts meeting its Fraud Filter indicators would be fraudulent and therefore should be frozen. Indeed, in an internal September 2020 presentation, Respondent acknowledged, “Fraudulent determinations would

require a detailed review of specific accounts, which given the volume, is unmanageable.”

23. For notices of error meeting any of its Fraud Filter indicators, Respondent continued with its nationwide strategy of automatically determining no error occurred and freezing the cardholder’s unemployment insurance benefit prepaid debit card account based solely on the Fraud Filter from September 28, 2020 to March 17, 2021.
24. Consumers whose unemployment insurance benefit prepaid debit card accounts Respondent froze through its Fraud Filter went weeks, and in some cases months, without access to their unemployment insurance benefits.
25. Some consumers whose prepaid debit card accounts Respondent froze incurred late fees and interest charges on their other accounts, and also missed phone and utility bill payments. Some consumers with frozen prepaid debit card accounts also faced other financial impacts, including foreclosure, eviction, and car repossession.
26. Beginning on March 18, 2021, for notices of error for which it determined no error had occurred based solely on the results of its Fraud Filter, Respondent blocked the cardholder’s unemployment insurance benefit prepaid debit card, rather than freezing the cardholder’s account.

27. For notices of error submitted by over 100,000 unemployment insurance benefit prepaid debit cardholders concerning alleged unauthorized EFTs that met one or more of the Fraud Filter indicators, Respondent continued to rely solely on the results of its Fraud Filter to determine no error had occurred until June 8, 2021.

Respondent's Strategy as Applied to EDD Cardholders

28. Eligible California consumers may receive their EDD unemployment insurance benefit payments through a check mailed by EDD or through EDD Prepaid Debit Cards and EDD Prepaid Debit Card Accounts.
29. During the Relevant Period, most eligible California consumers received their EDD unemployment insurance benefit payments through EDD Prepaid Debit Cards and Accounts.
30. From September 28, 2020 to March 17, 2021, for EDD Cardholders whose notices of error Respondent determined no error occurred through its Fraud Filter, Respondent sent denial notices reflecting Respondent's determination that the EDD Cardholder's Account or notice of error had been the subject of fraudulent or suspicious activity. Respondent's denial notices failed to mention that Respondent had also frozen the consumer's EDD Prepaid Debit Card Account.

31. Beginning in December 2020 and continuing to March 17, 2021, Respondent sent an additional letter notifying affected EDD Cardholders of their account freeze several days after the EDD Prepaid Debit Card Account freeze had gone into effect. In some cases, Respondent failed to notify affected EDD Cardholders that their EDD Prepaid Debit Card Accounts had been frozen at all.
32. EDD Cardholders seeking to file a notice of error with Respondent to seek liability protection spent hours a day on the phone attempting to notify Respondent that their EDD Prepaid Debit Card Account had been subject to unauthorized EFTs.
33. EDD Cardholders whose EDD Prepaid Debit Card Accounts Respondent froze based solely on its Fraud Filter spent hours a day on the phone with Respondent attempting to seek information regarding how to regain access to their frozen Account. Along with long hold times, Cardholders with EDD Prepaid Debit Card Accounts frozen as a result of the Fraud Filter were subject to disconnections, transfers, and inaccurate information from Respondent and its vendor agents, including that their Accounts had been frozen at the direction of EDD rather than by Respondent.
34. From September 28, 2020 to March 17, 2021, Respondent generally required EDD Cardholders with frozen EDD Prepaid Debit Card Accounts to reverify

their identity through EDD (rather than with Respondent) to regain access to their Account.

35. Respondent knew, or should have known, that EDD would not be able to handle the burden of quickly reverifying eligible EDD Cardholders whose EDD Prepaid Debit Card Accounts Respondent had frozen through its new strategy beginning on September 28, 2020.
36. During the summer of 2020, Respondent met with EDD dozens of times, often weekly, and was in telephone or email contact even more often.
37. In July 2020, EDD had approximately 1,400 staff to handle an average of 6.7 million consumer calls per week. In August 2020, EDD was answering and resolving only 1% of incoming calls.
38. Respondent did not inform EDD that it would be using a Fraud Filter and freezing unemployment insurance benefit prepaid debit card accounts before implementing that strategy on September 28, 2020.
39. Until March 18, 2021, the only exception to Respondent's requirement that EDD Cardholders reverify their identity through EDD to regain access to their frozen EDD Prepaid Debit Card Account was limited to Cardholders who filed a complaint asserting a particular hardship with Respondent through a state or congressional representative, a legal aid group or private attorney, or the media that reached the attention of Respondent's executives.

Findings and Conclusions as to Respondent's Strategy in California (Unfair Practice)

40. Sections 1031 and 1036 of the CFPA prohibit a “covered person” from engaging in any “unfair, deceptive, or abusive act or practice” in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).
41. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers, and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).
42. From September 28, 2020 to March 17, 2021, Respondent automatically determined, without any further investigation, that no error had occurred for any EDD Cardholder notice of error concerning alleged unauthorized EFTs that met any of the three indicators in Respondent's Fraud Filter. During most of this period, when Respondent determined no error had occurred through its Fraud Filter, Respondent also froze the cardholder's EDD Prepaid Debit Card Account.
43. This caused substantial injury to consumers. Not only did Respondent, through its Fraud Filter, incorrectly and automatically determine no error had occurred for tens of thousands of EDD Cardholders who had filed

notices of error, but Respondent also froze those cardholders' EDD Prepaid Debit Card Accounts (except as stated in Paragraph 17), meaning those EDD Cardholders could not receive or access the unemployment insurance benefit funds in their Accounts.

44. This substantial injury was not reasonably avoidable by EDD Cardholders. During this period, Respondent generally required EDD Cardholders whose Accounts were frozen through its strategy to reverify their identity through EDD to regain access to their Accounts.
45. EDD Cardholders received conflicting and delayed information from Respondent regarding the reasons for their EDD Prepaid Debit Card Account freeze, and the steps they needed to take to unfreeze their Account.
46. This substantial injury was not outweighed by any countervailing benefits to consumers or to competition.
47. As a result, Respondent engaged in unfair acts or practices, in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and (c), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Retroactive Application of Its Fraud Filter (Abusive Practice)

48. An act or practice is abusive if it, among other things, takes unreasonable advantage of the inability of a consumer to protect their interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

49. In late September 2020 or early October 2020, Respondent also applied its Fraud Filter to more than 11,000 notices of error concerning alleged unauthorized EFTs submitted by EDD Cardholders between April 1, 2020 and September 27, 2020 for which Respondent had previously provided the EDD Cardholder a permanent credit.
50. For those more than 11,000 notices of error, Respondent retroactively determined that no error had occurred based on the results of its Fraud Filter, and reversed those EDD Cardholders' permanent credits.
51. Affected EDD Cardholders were unable to protect their interests because they could not control how and when Respondent would investigate and resolve their notices of error.
52. Until at least December 2021, Respondent did not correct its reversals of these more than 11,000 previously-investigated-and-paid notices of error without an EDD Cardholder's request for reconsideration.
53. By reversing the permanent credits for EDD Cardholders who had already received notice from Respondent that their error claim had been investigated and paid, Respondent took unreasonable advantage of EDD Cardholders' inability to protect their interests.

54. As a result, Respondent engaged in abusive acts or practices, in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and (d)(2)(B), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Failure to Conduct Reasonable Error Resolution Investigations (EFTA and Regulation E)

55. Under EFTA, upon receiving notices of error, financial institutions may not determine no error had occurred without conducting a “good faith investigation of the alleged error” and without “a reasonable basis for believing that the consumer’s account was not in error.” 15 U.S.C. § 1693f(e).
56. Further, under Regulation E, when conducting an Error Resolution Investigation, a financial institution must conduct, at minimum, a “review of its own records regarding [the] alleged error.” 12 C.F.R. § 1005.11(c)(4), and the Error Resolution Investigation “must be reasonable,” 71 Fed. Reg. 1638, 1654 (Jan. 10, 2006).
57. From September 28, 2020 to June 8, 2021, Respondent used its Fraud Filter to determine no error had occurred for approximately 188,000 notices of error submitted by Affected Consumers nationwide concerning alleged unauthorized EFTs, without any further investigation or considering any other information relevant to Affected Consumers’ notices.

58. As a result, Respondent violated the requirement to conduct a reasonable Error Resolution Investigation under Sections 908 and 909 of EFTA, 15 U.S.C. §§ 1693f and 1693g, and Section 1005.11 of Regulation E.

Findings and Conclusions as to Respondent Impeding EDD Cardholders from Filing Notices of Error and Seeking Liability Protection from Unauthorized EFTs (Unfair Practices)

59. Throughout the Relevant Period, Respondent and EDD both directed EDD Cardholders to contact Respondent to file a telephonic notice of error.
60. Throughout the Relevant Period, EDD Cardholders could not file notices of error with Respondent online, through Respondent's other (non-prepaid) customer service divisions, or in person at Respondent's branches.
61. EDD Cardholders who called for assistance after their EDD Prepaid Debit Card Account was subject to unauthorized EFTs were required to navigate Respondent's prepaid call center divisions staffed by vendor agents.
62. Throughout the Relevant Period, Respondent represented on its EDD Debit Card FAQ webpage that it would provide EDD Cardholders with "dedicated customer service representatives" who are "available 24 hours a day, 7 days a week" to help EDD Cardholders "investigate transactions."
63. Respondent further advised consumers in its EDD Cardholder Agreement, which Respondent mailed to all new EDD Cardholders, that "Telephoning is the best way of keeping your possible losses down."

64. Under Respondent's "Zero Liability" guarantee, which Respondent also includes in its EDD Cardholder Agreement, Respondent represents that EDD Cardholders will incur no liability for unauthorized use of their EDD Prepaid Debit Card up to the amount of the unauthorized transactions, provided they notify Respondent within a reasonable amount of time.
65. For much of 2020, EDD Cardholders faced long hold times when attempting to file a notice of error with Respondent over the phone and take advantage of Respondent's "Zero Liability" guarantee for unauthorized use of cardholders' EDD Prepaid Debit Cards.
66. Throughout the Relevant Period, EDD Cardholders were required to first speak with an agent in Respondent's main prepaid call center before being transferred to Respondent's prepaid claims initiation division, which was the only division authorized to accept EDD Cardholders' notices of error over the phone.
67. From May 1, 2020 to July 1, 2020, prepaid debit cardholders nationwide had to wait on average nearly two hours to speak with an agent in Respondent's prepaid claims initiation division.
68. From September 1 to December 1, 2020, prepaid debit cardholders nationwide had to wait on average over an hour to speak with an agent in Respondent's prepaid claims initiation division.

69. Unlike Respondent's main prepaid call center, throughout the Relevant Period Respondent's prepaid claims initiation division was not available 24 hours a day, 7 days a week, but instead kept the following business hours: Monday to Friday, 5am PT to 7pm PT; Saturday, 6:30am PT to 5pm PT; and closed on Sundays.
70. Through September 2020, Respondent's prepaid claims initiation division was still staffed by fewer than 300 vendor agents to assist unemployment insurance benefit prepaid debit cardholders nationwide with filing their notices of error.
71. Throughout 2020, certain EDD Cardholders remained on hold with Respondent's prepaid call center divisions for hours daily, over the course of weeks, in attempts to file notices of error.
72. EDD Cardholders were also subject to transfers, dropped calls, and misinformation from Respondent's prepaid call center agents, all of which further impeded their ability to successfully file notices of error with Respondent.
73. EDD Cardholders could not reasonably avoid the harm caused by extensive hold times, dropped calls, and misinformation from Respondent's prepaid call center agents because, among other reasons, Respondent directed EDD Cardholders to file notices of error by contacting Respondent by phone.

74. This substantial injury to EDD Cardholders was not outweighed by any countervailing benefits to consumers or to competition.
75. As a result, Respondent engaged in unfair acts or practices, in violation of Sections 1031 and 1036 of the CFPA. 12 U.S.C. §§ 5531(a) and (c), 5536(a)(1)(B).

Findings and Conclusions as to Respondent's Failure to Timely Investigate EDD Cardholders' Notices of Error Concerning Alleged Unauthorized EFTs (EFTA and Regulation E)

76. For timely-submitted consumer notices of error, EFTA requires financial institutions to “investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days.” 15 U.S.C. § 1693f(a).
77. A financial institution may extend that 10-business-day investigation deadline to 45 calendar days if it provisionally credits the consumer's account in the amount of the alleged error within 10 business days of receiving the error notice. 15 U.S.C. § 1693f(c); 12 C.F.R. § 1005.11(c)(2).
78. This 45-day investigation deadline may be extended to 90 calendar days if a notice of error involves an EFT that was not initiated within a state; resulted from a point-of-sale debit card transaction; or occurred within 30 days of the first deposit to the account. 12 C.F.R. § 1005.11(c)(3)(ii).

79. This extended 90-day investigation deadline does not apply to transactions at an ATM, including ATMs located at merchant locations. Official Interpretation Comment 11(c)(3)-1, 12 C.F.R. Pt. 1005, Supp. I.
80. In certain instances, for notices of error concerning alleged unauthorized EFTs submitted by EDD Cardholders during the Relevant Period, Respondent failed to complete its investigation within 10 business days and Respondent did not issue a provisional credit (or issued a provisional credit after 10 business days).
81. In certain instances, for notices of error concerning alleged unauthorized EFTs relating to ATM transactions submitted by EDD Cardholders during the Relevant Period, Respondent failed to complete its investigation within 45 calendar days.
82. In certain instances, for notices of error concerning alleged unauthorized EFTs submitted by EDD Cardholders during the Relevant Period, Respondent failed to complete its investigation within 90 calendar days.
83. As a result, Respondent violated EFTA and Regulation E by failing to timely investigate EDD Cardholders' notices of error concerning alleged unauthorized EFTs. 15 U.S.C. § 1693f(a), (c); 12 C.F.R. § 1005.11(c)(2)-(3).

CONDUCT PROVISIONS

V.

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

84. 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, Sections 908 and 909 of EFTA, 15 U.S.C. §§ 1693f and 1693g, and Section 1005.11 of Regulation E, in connection with administering unemployment insurance benefit prepaid debit cards and accounts, including in connection with receiving, investigating, and resolving notices of error submitted by unemployment insurance benefit prepaid debit cardholders concerning alleged unauthorized EFTs.
85. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with administering unemployment insurance benefit prepaid debit cards and accounts, must take the following affirmative actions:
 - a. Respondent must not determine no error occurred solely based on the results of an automated fraud filter for notices of error submitted by unemployment insurance benefit prepaid debit cardholders;

- b. Respondent must not freeze an unemployment insurance benefit prepaid debit card account solely based on the results of an automated fraud filter;
- c. Respondent must, during the course of an Error Resolution Investigation, reasonably consider all information relevant to the unemployment insurance benefit prepaid debit cardholder's notice of error, including, but not limited to, information within Respondent's own records;
- d. Respondent must not condition access to an open EDD Prepaid Debit Card Account for an existing EDD Cardholder on reverifying their identity through EDD, and must allow EDD Cardholders to attempt to verify their identity directly with Respondent, except in the cases where (i) EDD disqualified the EDD Cardholder or requested that the EDD Prepaid Debit Card Account be frozen, or (ii) reverification through EDD is requested by EDD or is required by law;
- e. Respondent must allow EDD Cardholders to attempt to reverify their identity in order to unblock their EDD Prepaid Debit Card Account in person at Respondent's financial center branches. Respondent's financial center branches must have processes and procedures in place to facilitate telephonic submission of notices of error by EDD Cardholders; and

f. Respondent must conduct a risk assessment of its Prepaid Card

Unemployment Insurance Benefits Program, including an assessment of risks associated with increased volumes of unemployment insurance benefit prepaid debit cardholders in the future. This requirement may be performed as part of the Program Risk Assessment required of Respondent by Article V of the OCC Consent Order.

86. Respondent must provide the appropriate staffing and resources necessary to comply with Paragraphs 87–89.

VI.

Compliance Plan

IT IS FURTHER ORDERED that:

87. Within 60 days of the Effective Date, Respondent must submit to the Regional Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's administration of unemployment insurance benefit prepaid debit cards and accounts complies with all applicable laws that the Bureau enforces, including Federal consumer financial laws, and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:

- a. detailed steps for addressing each action required by this Consent Order as set forth in Paragraphs 84–85; and
 - b. specific timeframes and deadlines for implementation of the steps described above.
88. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Respondent to revise it. If the Regional Director directs Respondent to revise the Compliance Plan, Respondent must revise and resubmit the Compliance Plan to the Regional Director within 30 days.
89. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

VII.

Role of the Board

IT IS FURTHER ORDERED that:

90. The Board, or a committee thereof, must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.

91. Although this Consent Order requires Respondent to submit certain documents for review or non-objection by the Regional Director or Enforcement Director, the 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.
92. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board, or a committee thereof, must:
- a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
 - b. Require timely reporting by management to the Board on the status of compliance obligations; and
 - c. Require timely and appropriate corrective action to remedy any material non-compliance with Board directives related to this Section.

MONETARY PROVISIONS

VIII.

Order to Pay Redress

IT IS FURTHER ORDERED that:

93. Respondent shall provide redress to Affected Consumers, which shall include (i) compensation for the value of unauthorized EFTs alleged by Affected Consumers in notices of error that Respondent incorrectly denied through its Fraud Filter; (ii) compensation to Affected Consumers for related Consequential Harm, as required by this Section; and (iii) compensation to Affected Consumers through an individualized review process, as required by this Section. Respondent will not be required to pay redress to consumers meeting the definition of Affected Consumers as of the Effective Date for whom (i) the state benefit granting agency has determined or later determines should have been initially disqualified for unemployment insurance benefit payments, or (ii) whose unemployment insurance benefit prepaid debit card account is or becomes frozen, blocked, or closed by Respondent at the request of the state benefit granting agency, or due to suspected fraud, anti-money laundering, or financial crimes inquiries or determinations made in conjunction with law enforcement, or due to an independent legal requirement such as receipt of legal process or orders.
94. Within 90 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 revise and resubmit the 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.

95. The Redress Plan must include:

- a. A description of the methodology Respondent will use to identify Affected Consumers, including Affected Consumers who no longer have active unemployment insurance benefit prepaid debit card accounts with Respondent;
- b. A description of the procedures and process Respondent will use to remediate each Affected Consumer, which shall include: (i) calculating the value of unauthorized EFTs alleged by Affected Consumers in notices of error that Respondent incorrectly denied through its Fraud Filter; (ii) calculating the lump sum Consequential Harm payment; and (iii) an individualized review process administrated by an independent third-party payment administrator that allows Affected Consumers to

- seek additional redress compensation by submitting evidence of financial harm exceeding Consequential Harm-related payments;
- c. A description of the methodology Respondent will use to calculate the amount of remediation to be paid as Consequential Harm for each Affected Consumer;
 - d. A description of the methodology Respondent will use to identify compensable financial impacts to Affected Consumers for the purpose of additional redress compensation exceeding Consequential Harm-related payments in connection with the individualized review process;
 - e. A description of the type of supporting documentation that will be required for Affected Consumers seeking additional financial redress compensation exceeding Consequential Harm-related payments in connection with the individualized review process;
 - f. A description of the procedures for issuing and tracking redress payments to Affected Consumers;
 - g. A description of the plan for developing communications that will be sent to notify Affected Consumers of their redress under the Redress Plan (Redress Notification). The Redress Notification must include a statement that the redress is being paid in accordance with terms of this Consent Order;

- h. A description of the processes for handling any redress funds for Affected Consumers that remain unclaimed; and
 - i. The procedures, deadlines, and timeframes for completing each step of the Redress Plan, consistent with the terms of this Consent Order.
- 96. Following the implementation of the Redress Plan, Respondent must submit a report that:
 - a. Identifies each Affected Consumer evaluated as part of the Redress Plan;
 - b. States the amount of redress Respondent provided to each Affected Consumer for (i) notices of error that Respondent incorrectly denied; (ii) Consequential Harm; and (iii) pursuant to the individualized review process (if applicable);
- 97. Respondent must make reasonable attempts to obtain a current physical address for any Affected Consumer (i) before sending any redress payment required under this Section VIII and (ii) for a period of 360 days from the date the redress was initially sent to the Affected Consumer upon receipt of returned mail or failure to negotiate a check that is issued to the consumer.
- 98. 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:

99. 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, Respondent must pay a civil money penalty of \$100 million to the Bureau.
100. Within 10 business 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.
101. 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).
102. 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.

103. 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:

104. 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.
105. 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.
106. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
107. 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.

COMPLIANCE PROVISIONS

XI.

Reporting Requirements

IT IS FURTHER ORDERED that:

108. 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.
109. Within 7 days of the Effective Date, Respondent must 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.
110. Respondent must report any change in the information required to be submitted under Paragraph 109 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

111. Within 90 days of the Effective Date, and again 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, sworn to under penalty of perjury, 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 Compliance Plan; and
- c. Attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

XII.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

112. 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.

113. 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.
114. 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 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.
115. 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.
116. Within 90 days of the Effective Date, Respondent must provide the Bureau with a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 112–114 and a copy of all

signed and dated statements acknowledging receipt of this Consent Order under Paragraph 115.

XIII.

Recordkeeping

IT IS FURTHER ORDERED that:

117. 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;
- b. All documents and records pertaining to the Redress Plan, described in Section VIII above;
- c. All documents and records pertaining to the Compliance Plan, described in Section VI above;
- d. For each individual Affected Consumer:
 - i. the consumer's name, address, and, if available to Respondent, phone number, and email address;
 - ii. the date(s) the consumer submitted a notice of error concerning alleged unauthorized EFTs that Respondent wrongly determined no error occurred based solely on the results of Respondent's Fraud Filter;

- iii. the value of alleged unauthorized EFTs in the consumer's notice(s) of error that Respondent wrongly determined no error occurred based solely on the results of Respondent's Fraud Filter; and
 - iv. the length of time that Respondent froze or blocked the consumer's unemployment insurance benefit prepaid debit card account due to Respondent's determination that no error occurred based solely on the results of Respondent's Fraud Filter.
- e. All consumer complaints and refund requests (whether received directly or indirectly, such as through a third party) regarding Respondent's administration of unemployment insurance benefit prepaid debit cards and accounts relating to government benefit payments, and any responses to those complaints or requests.
- f. Records showing, for each Respondent employee or agent providing material services related to Respondent's unemployment insurance benefit prepaid debit card programs, that person's name, telephone number, email, physical, and postal address, job title or position, dates of service, and, if applicable, the reason for termination.
- g. Records showing, for each service provider providing services related to

- Respondent's administration of unemployment insurance benefit prepaid debit cards and accounts, the name of a point of contact, and that person's telephone number, email, physical, and postal address, job title or position, dates of service, and, if applicable, the reason for termination.
118. Respondent must make the documents identified in Paragraph 117 available to the Bureau upon the Bureau's request.

XIV.

Notices

IT IS FURTHER ORDERED that:

119. 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. 2022-CFPB-0004," and send them by overnight courier or first-class mail to the below addresses and contemporaneously by email to Enforcement_Compliance@cfpb.gov and Southeastregion@cfpb.gov:

Regional Director, Bureau Southeast Region
Peachtree Summit Building
401 W. Peachtree Street
Atlanta, GA 30308

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement

1700 G Street, N.W.
Washington D.C. 20552

XV.

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

120. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

XVI.

Compliance Monitoring

IT IS FURTHER ORDERED that:

121. 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.
122. 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 IV; or (c) compliance with the Consent Order. The person interviewed may have counsel present.

123. 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.

XVII.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

124. 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.
125. 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.

ADMINISTRATIVE PROVISIONS

XVIII.

IT IS FURTHER ORDERED that:

126. 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 127 below. 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.
127. 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.

128. 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.
129. 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.
130. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
131. 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.

132. 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 Section 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.

133. 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.

134. 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 14th day of July, 2022.

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau