

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of:

Bank of America, N.A.
Charlotte, North Carolina

)
)
)
)
)

AA-ENF-2022-22

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over Bank of America, N.A., Charlotte, North Carolina (“Bank”);

WHEREAS, the OCC intends to initiate civil money penalty proceedings against the Bank pursuant to 12 U.S.C. § 1818(i), through the issuance of a Notice of Assessment of a Civil Money Penalty, related to: (1) the administration of the Bank’s prepaid cards for unemployment benefits, specifically engagement in (i) unsafe or unsound practice(s), including deficiencies in its risk management, operational processes and controls, internal audit, and investigation and resolution of consumer claims of unauthorized transactions; and (ii) unfair and deceptive practices in violation(s) of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1); and (2) engaging in unsafe or unsound practices related to deficiencies in its enterprise-wide complaints risk management framework;

WHEREAS, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, by and through its duly elected and acting Board of Directors (“Board”), consents to the issuance of this Consent Order (“Order”), by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”); and

NOW, THEREFORE, pursuant to the authority vested in the OCC by Section 8(i) of the

Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(i), the OCC hereby orders that:

ARTICLE I

JURISDICTION

(1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(3) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this civil money penalty action against the Bank pursuant to 12 U.S.C. § 1818(i).

ARTICLE II

COMPTROLLER’S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

(1) For several years, the Bank issued and administered prepaid debit cards to distribute unemployment insurance benefits (“UI Prepaid Cards”) to consumers that were loaded with benefit funds issued by certain states, hereinafter referred to as the Unemployment Benefits Prepaid Card Program (“Program”).

(2) In March 2020, millions became unemployed and Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which created the new Pandemic Unemployment Assistance (“PUA”) benefit. The CARES Act and PUA expanded unemployment benefits eligibility and provided greater benefit amounts than previously available. As a result, the size of the Program increased substantially (from under one million unique cards loaded in January 2020 to over six million in July 2020), as did the volume of

benefits issued by the states and loaded onto UI Prepaid Cards (from approximately \$1 billion in January 2020 to over \$27 billion in July 2020). Along with the increases in Program participants and benefits, the Program experienced an increase in fraud, including with respect to unauthorized transaction claims.

(3) The Bank failed to establish effective risk management over the Program, and, beginning in 2020, denied or delayed many consumers' access to unemployment benefits when consumers filed or attempted to file UI Prepaid Card unauthorized transaction claims.

Specifically, the Bank:

- (a) applied an automated fraud filter between September 28, 2020 and June 8, 2021 to decision UI Prepaid Card error claims that met certain criteria ("Fraud Filter") without conducting a sufficient investigation to: (i) deny many consumers' claims of unauthorized transactions on their UI Prepaid Cards, and (ii) "freeze" or "block" the UI Prepaid Card accounts associated with the claims. Consumers with frozen or blocked accounts could not access the unemployment benefits in their UI Prepaid Card accounts until the Bank removed the freeze or block.
- (b) failed to provide timely and full provisional or final credit to many consumers entitled to such credits who reported unauthorized transactions on their UI Prepaid Card accounts.
- (c) retroactively applied the Fraud Filter to many consumers' claims of unauthorized transactions on their UI Prepaid Card accounts without conducting further investigation and providing advance notice, which incorrectly resulted in the reversal of provisional and final credits that the

Bank previously provided to those consumers.

- (d) impeded many consumers' ability to regain access to their unemployment benefits through the UI Prepaid Cards and to request reconsideration of their unauthorized transaction claims as a result of operational deficiencies.
- (e) provided consumers deceptive disclosures and notices with respect to liability for unauthorized transactions, processing of unauthorized transaction claims, and account freezes and blocks.

(4) Overall, the Bank has the following deficiencies in its administration of the Program:

- (a) inadequate risk management practices in both the front-line units and independent risk management, including ineffective oversight, risk assessment, monitoring, and reporting;
- (b) inadequate internal controls, including those relating to contract management;
- (c) inadequate oversight, risk management, and monitoring of UI Prepaid Card unemployment benefits vendors ("Program Vendors"); and
- (d) inadequate oversight and coverage by the Bank's independent audit function.

(5) In addition, the Bank failed to establish an effective enterprise-wide complaints risk management framework that is commensurate with the Bank's size, complexity, and risk profile. Specifically, the complaint risk management framework lacks an effective:

- (a) process to identify, measure, manage, and report complaints;

- (b) complaint resolution process; and
- (c) quality assurance process.

(6) By reason of the deficiencies and conduct described in Paragraphs (2) through (5) of this Article, the Bank engaged in unsafe or unsound practices and engaged in unfair and deceptive practices in Section 5 of the FTC Act, 15 U.S.C. §45(a). These violations and practices support actions against the Bank under 12 U.S.C. § 1818(b) and (i)(2)(B).

(7) The Bank has begun taking corrective actions and has committed to taking necessary and appropriate steps to remedy the deficiencies identified by the OCC and to assist and remediate harmed consumers.

ARTICLE III

ORDER FOR A CIVIL MONEY PENALTY

(1) The Bank shall make payment of a civil money penalty in the total amount of one hundred twenty-five million (\$125,000,000) which shall be paid upon the execution of this Order.

(2) Such payment shall be made by a wire transfer sent in accordance with instructions provided by the OCC and the docket number of this case (AA-ENF-2022-22) shall be entered on the wire confirmation. A photocopy of the wire confirmation shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 400 7th Street, S.W., Washington, D.C. 20219.

ARTICLE IV

WAIVERS

(1) The Bank, by executing and consenting to this Order, waives:

- (a) any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818;
- (b) any and all procedural rights available in connection with the issuance of this Order;
- (c) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
- (d) any and all rights to seek any type of administrative or judicial review of this Order;
- (e) any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;
- (f) any and all rights to assert these proceedings, the consent to and/or the issuance of this Order, as the basis for a claim of double jeopardy in any pending or future proceedings brought by the United States Department of Justice or any other governmental entity; and
- (g) any and all rights to challenge or contest the validity of this Order.

ARTICLE V

CLOSING

(1) This Order is a settlement of the civil money penalty proceedings against the Bank contemplated by the OCC, based on the unsafe or unsound practices and violations of law described in the Comptroller's Findings set forth in Article II of this Order. The OCC releases

and discharges the Bank from all potential liability for a civil money penalty order that has been or might have been asserted by the OCC based on the practices and/or violations described in Article II of this Order, to the extent known to the OCC as of the effective date of this Order.

Nothing in this Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions other than a civil money penalty order against the Bank based on the Comptroller's Findings set forth in Article II of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) based on the Comptroller's Findings set forth in Article II of this Order, or any other findings; or
- (d) utilizing the Comptroller's Findings set forth in Article II of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

(2) Nothing in this Order is a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) This Order is:

- (a) an "order issued with the consent of the depository institution" within the meaning of 12 U.S.C. § 1818(h)(2);

(b) an “effective and outstanding . . . order” within the meaning of 12 U.S.C. § 1818(i)(1); and

(c) a “final order” within the meaning of 12 U.S.C. § 1818(i)(2) and (u).

(4) This Order is effective upon its issuance by the OCC, through the Comptroller’s duly authorized representative.

(5) This Order is not a contract binding on the United States, the United States Treasury Department, the OCC, or any officer, employee, or agent of the OCC and neither the Bank nor the OCC intends this Order to be a contract.

(6) No separate promise or inducement of any kind has been made by the OCC, or by its officers, employees, or agents, to cause or induce the Bank to consent to the issuance of this Order.

(7) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his duly authorized representative, has hereunto set her signature on behalf of the Comptroller.

//s// Digitally Signed, Dated: 2022.07.14

Tanya K. Smith
Deputy Comptroller
Large Bank Supervision

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank of America, N.A., Charlotte, North Carolina have hereunto set their signatures on behalf of the Bank.

/s/	07/12/22
_____ Brian T. Moynihan	_____ Date
/s/	13 Jul, 2022
_____ Sharon L. Allen	_____ Date
/s/	13 Jul, 2022
_____ Frank P. Bramble, Sr.	_____ Date
/s/	13 Jul, 2022
_____ Pierre J.P. de Weck	_____ Date
/s/	07/13/2022
_____ Arnold W. Donald	_____ Date
/s/	13 Jul, 2022
_____ Linda P. Hudson	_____ Date
/s/	12 Jul, 2022
_____ Monica C. Lozano	_____ Date
/s/	12 Jul, 2022
_____ Lionel L. Nowell, III	_____ Date
/s/	12 Jul, 2022
_____ Denise L. Ramos	_____ Date
/s/	13 Jul, 2022
_____ Clayton S. Rose	_____ Date

/s/

Michael D. White

/s/

Thomas D. Woods

/s/

R. David Yost

/s/

Maria T. Zuber

12 Jul, 2022

Date

13 Jul, 2022

Date

12 Jul, 2022

Date

07/13/2022

Date