

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

ADMINISTRATIVE PROCEEDING  
File No. 2022-CFPB-0002

In the Matter of:

**CONSENT ORDER**

**BANK OF AMERICA, N.A.**

The Consumer Financial Protection Bureau (“Bureau”) has reviewed the garnishment-related practices of Bank of America, N.A. (“Respondent”) and has identified the following law violations: (1) Respondent engaged in unfair acts and practices by responding to and processing garnishment notices against out-of-state bank accounts in violation of certain garnishment-issuing states’ prohibitions against out-of-state garnishment; (2) Respondent engaged in unfair acts and practices by failing to apply the appropriate state exemptions to certain consumers’ deposit accounts after receiving garnishment notices; (3) Respondent engaged in deceptive acts and practices by misrepresenting to consumers, by implication, the applicable state exemption rights for garnishment by applying the issuing state’s exemptions instead of the exemptions of the consumer’s state of residence, where

the states of issuance and residence differ; (4) Respondent engaged in unfair acts and practices by using a deposit agreement that required consumers to direct Respondent not to contest legal process and waive Respondent’s liability for its unlawful garnishment conduct; and (5) Respondent engaged in deceptive acts and practices by suggesting consumers could not bring legal claims misrepresenting consumers’ legal rights against Respondent regarding garnishment proceedings, all in violation of Sections 1031(a) and 1036(a)(1)(B) of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B). Under Sections 1053 and 1055 of the 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.

## II.

### **Stipulation**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated April 29, 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 §§ 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” are Consumers who, as a result of Respondent acting upon an Out-of-State Garnishment Notice issued by a court, attorney, or other authorized person (*i.e.*, issuing entity) in a Restriction State, paid Garnishment-Related Fees between August 1, 2011 and the Effective Date.
  - b. “Board” means Respondent’s duly-elected and acting Board of Directors or a committee thereof.
  - c. “Consumer” means an individual holding at least one active Deposit Account with Respondent.
  - d. “Deposit Account” means a consumer deposit account held by one or more Consumers between August 1, 2011 and the Effective Date.

- e. “Deposit Agreement” means the standard deposit agreement to which Consumers consent when opening a Deposit Account.
- f. “Effective Date” means the date on which the Consent Order is issued.
- g. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.
- h. “Garnishment Notice” means the first notice of legal process by one or more creditors or judgment creditors, their counsel, or a court, of a legal proceeding seeking that Respondent turn over funds in a Consumer’s Deposit Account in Respondent’s custody or control to satisfy an amount owed to a creditor or judgment creditor, including—but not limited to—a garnishment, writ of attachment, execution, levy, restraining order, restraining notice, restraining notice and information subpoena, seizure order, forfeiture, or other similar legal process or order, but excluding any legal process where (1) the party seeking to have Respondent turn over a Consumer’s funds is a federal, state, municipal, or local governmental agency or entity, or (2) the creditor is seeking to satisfy a judgment awarding child support, alimony, or spousal maintenance.

- i. “Garnishment-Related Fees” means legal order processing fees, attorneys’ fees, overdraft fees, insufficient funds fees, or account maintenance fees assessed by Respondent after processing an Out-of-State Garnishment Notice issued from a Restriction State from the time Respondent froze or held the Consumer’s Deposit Account until 30 days after the freeze or hold was removed.
- j. “Issuing State” means the State from which a particular Garnishment Notice, including an Out-of-State Garnishment Notice, was issued.
- k. “Out-of-State Account” means a Deposit Account located in a State other than the Issuing State.
- l. “Out-of-State Garnishment Notice” means a Garnishment Notice concerning an Out-of-State Account but does not include Garnishment Notices domesticated in the state where the Consumer’s Deposit Account is located.
- m. “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.
- n. “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.

- o. “Relevant Period” means August 1, 2011 to March 29, 2022.
- p. “Respondent” means Bank of America, N.A. and its successors and assigns.
- q. “Restriction State” is a State that prohibited or otherwise restricted garnishment of Out-of-State Accounts, at the time Respondent was served with or acted upon an Out-of-State Garnishment Notice issued from that State. Restriction States include but are not limited to Alabama, Arizona (before August 2019), California, Florida (after August 2014), and Oregon.
- r. “States” or “states” means all U.S. states where Respondent has a physical presence as well as the District of Columbia and any U.S. territory where Respondent has a physical presence.

## 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 deposit 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 for use by Consumers primarily for personal, family, or household purposes.

## **Respondent’s Garnishment Practices**

### Background

6. Garnishment (referred to in some states as “attachment”) is a common method used by a creditor to enforce a money judgment against a debtor. After a creditor receives a judgment in a lawsuit, the “judgment creditor” can seek authorization from a court to garnish the bank account of the “judgment debtor” in a post-judgment garnishment proceeding. To do so, either a court in the state that issued the underlying judgment or the judgment creditor itself issues a Garnishment Notice against the judgment debtor and serves it on a financial institution (the “garnishee”).
7. Bank account garnishments are governed by state law. Each state has a judicial process by which a judgment creditor can freeze or hold and then seize money from a judgment debtor’s deposit account to enforce a civil judgment against the judgment debtor.

8. To garnish a bank account lawfully, a state court must have jurisdiction over the garnishee (the bank that holds a deposit account) and the property to be garnished (the deposit account).
9. During the Relevant Period, Respondent's standard consumer deposit agreement defined the location of the Consumer's account as the branch where the account was opened.

#### Out-of-State Garnishments

10. During the Relevant Period, Respondent processed hundreds of thousands of Garnishment Notices issued by courts across the country, including Out-of-State Garnishment Notices. In many cases, Respondent failed to follow certain state-specific requirements and instead generally treated all Garnishment Notices alike: if the Garnishment Notice was issued from a state where Respondent had a financial center, it responded to the Garnishment Notice by indicating that the identified Consumer had a Deposit Account with potentially-garnishable assets and froze or held the Consumer's account, regardless of whether the account was located outside of the Issuing State.
11. In many cases, Respondent's responses to Garnishment Notices did not distinguish between Out-of-State Garnishment Notices issued in Restriction States and Out-of-State Garnishment Notices issued in non-

Restriction States. Garnishment Notices issued from a state other than where the bank account is located—*i.e.*, Out-of-State Garnishment Notices—require further scrutiny from Respondent.

12. Respondent frequently answers Out-of-State Garnishment Notices by identifying all Deposit Accounts it held for the Consumer anywhere in the nation and held or froze the funds in those Deposit Accounts regardless of where the Deposit Accounts were located.
13. In most cases, Respondent’s state-specific policies and procedures specifically instructed its staff to identify and process Garnishment Notices (which may include holding or freezing funds) without regard for whether the Consumer’s accounts were located in the same state as the court that issued the Garnishment Notice.
14. During the Relevant Period, Respondent has responded to Consumers who complain about Out-of-State Garnishment Notices by telling Consumers that it will identify assets held in accounts located in any state where it is located “subject to any limitations imposed by state law.”
15. Respondent’s training materials also teach Respondent employees that, for the most part, a Garnishment Notice issued by a court or other issuing entity in one state reaches accounts located outside that state. During the Relevant Period, Respondent’s training materials identified a few of the

Restriction States that limit the reach of Out-of-State Garnishment Notices issued by courts or other issuing entities in those States and instruct Respondent employees not to process those Out-of-State Garnishment Notices. But, during the Relevant Period, Respondent's training materials did not include all of the Restriction States identified in this Consent Order. Moreover, Respondent did not consistently apply those instructions. During the Relevant Period, Respondent processed Out-of-State Garnishment Notices from Restriction States identified in Respondent's training materials.

16. In many cases, when answering Out-of-State Garnishment Notices, Respondent did not notify the issuing court or other issuing entity that the funds sought to be garnished were located in another state, which would have put the issuing court or other issuing entity on notice that the funds were outside the state.
17. Instead, Respondent routinely responds to Out-of-State Garnishment Notices from the Restriction States with an answer or other document that identified Consumers' funds held in accounts that were not located in those states. It then often held or froze and eventually turned over those funds to the judgment creditor. In some other cases, however, Respondent responded by informing the issuing court or other issuing entity that the

Consumer did not have any attachable funds or accounts within the Issuing State and declined to process the Out-of-State Garnishment Notice. This approach was not done consistently in the Restriction States that Respondent identified in its training materials.

18. After receiving Garnishment Notices from certain states, but before turning over Consumers' funds, Respondent charged legal order processing and, sometimes, attorneys' fees to Consumers' frozen or held Deposit Accounts, unless doing so would be inconsistent with the relevant state law. It then paid the amount of the Out-of-State Garnishment Notice, or as much of the amount as could be paid from funds available in the garnished Deposit Accounts.
19. During the Relevant Period, Respondent has processed at least 3,700 Out-of-State Garnishment Notices from Restriction States without notifying the issuing court or other issuing entity that the Consumer's Deposit Account was not located in the Issuing State. Affected Consumers have paid at least \$592,000 in Garnishment-Related Fees to Respondent because of these Out-of-State Garnishment Notices.

#### State-Specific Exemption Laws

20. Many state laws exempt, or prohibit the garnishment of, certain amounts of money from a Consumer's Deposit Account. These state exemption laws

often provide that funds up to a certain defined amount are temporarily or permanently protected from garnishment. In many states, Consumers may affirmatively assert their statutory protections in court. In most such states, Consumers make exemption claims pursuant to forms provided or prescribed by the courts. In other states, the garnishee, like Respondent, is required to apply certain exemptions on the Consumer’s behalf, and the Consumer may then claim additional exemptions, where applicable. Financial institutions, including Respondent, are also required to apply federal exemptions.

21. For those states where Respondent is required to apply certain state exemptions on behalf of the Consumer, Respondent’s policy and practice when responding to Garnishment Notices, including Out-of-State Garnishment Notices, is to apply the exemption law of the state that issued the Garnishment Notice—*i.e.*, the Issuing State—rather than the law of the state where the Consumer resides in those instances where the two states differ.

#### Respondent’s Deposit Agreement and Disclosures

22. Respondent’s Deposit Agreement purports to have Consumers “direct” Respondent, when served with legal process such as a writ of garnishment, “not to contest the legal process,” and states that Respondent has “no

liability to [the Consumer] if [Respondent] accept[s] and compl[ies] with legal process as provided in this section or by law.”

23. Respondent directs Consumers to this waiver when responding to Consumers who complain that their accounts were frozen, held, or garnished in response to an Out-of-State Garnishment Notice.
24. Federal law, such as the Treasury Department’s rule on Garnishment of Accounts Containing Federal Benefit Payments, 76 Fed. Reg. 9939, 9951 (Feb. 23, 2011) (Federal Benefits Garnishment Rule), and many states’ laws, prohibit banks from requiring consumers to waive certain exemption rights.
25. The Federal Benefits Garnishment Rule, which protects a litany of federal benefits from garnishment and the claims of judgment creditors, prohibits a financial institution from requiring an account holder to waive any protection available under the rule.
26. Respondent’s Deposit Agreement, however, purports to require that Consumers waive all claims against Respondent, regardless of whether it applies the Consumer’s correct exemption rights, as a condition of opening a Deposit Account.

**Findings and Conclusions as to Responses to Out-of-State Garnishment Notices (Unfair Practice)**

27. The CFPB prohibits covered persons or service providers from engaging “in any unfair, deceptive, or abusive act or practice.” 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).
28. An act or practice is unfair under the CFPB if “the act or practice causes or is likely to cause substantial injury to consumers which are not reasonably avoidable by consumers” and “such substantial injury is not outweighed by countervailing benefits to consumers or competition.” 12 U.S.C. § 5531(c).
29. Section 1054(a) of the CFPB grants the Bureau authority to commence a civil action against any person who violates a Federal consumer financial law. 12 U.S.C. § 5554(a). The CFPB is a Federal consumer financial law. 12 U.S.C. § 5481(14).
30. In at least 3,700 instances during the Relevant Period, Respondent responded to Out-of-State Garnishment Notices from the Restriction States without disclosing to courts or other issuing entities in its answers or other responses that the Deposit Accounts in question were not located in the states from which the Garnishment Notices issued.
31. In many of those instances where Respondent failed to disclose to a Restriction State court or issuing entity that the Out-of-State Garnishment

Notices were for bank accounts located outside of the state, Respondent informed the Consumer about the Out-of-State Garnishment Notice, subsequently processed the Out-of-State Garnishment Notice, froze or held the Consumer's funds, turned over those funds to the judgment creditor, and imposed Garnishment-Related Fees on the Consumer.

32. In at least 3,700 instances, Respondent's conduct caused or was likely to cause substantial injury to Affected Consumers in the form of Garnishment-Related Fees, frozen or held funds, and funds turned over to judgment creditors.
33. As a result of Respondent's practices related to Out-of-State Garnishment Notices, Affected Consumers often lost access to funds that Respondent froze or held when it received those notices. Consumers may also have suffered a permanent loss of the account funds when Respondent responded to these Out-of-State Garnishment Notices without indicating that the relevant account was not located in the issuing Restriction State, froze or held the funds, and ultimately turned the funds over to judgment creditors.
34. Respondent charged Consumers fees for responding to a Garnishment Notice, including legal order processing fees and, where applicable, attorneys' fees. Respondent may also have assessed other fees such as

overdraft, insufficient funds, or account maintenance fees, which might not have been assessed had Respondent declined to process the Out-of-State Garnishment Notices.

35. Consumers could not reasonably avoid such substantial injury. Consumers do not and cannot control whether Respondent discloses to the issuing court or entity that Consumers' Deposit Accounts are located outside of the state that issued the Garnishment Notice. Further, even if a Restriction State's procedural requirements allow Consumers to object to a Garnishment Notice, it is not reasonable to expect Consumers to have the necessary understanding of the reach of Garnishment Notices issued from states that limit or restrict out-of-state garnishment and any rights they may have to object to them to avoid the harm.
36. The substantial injury Respondent caused or was likely to cause to Consumers is not outweighed by countervailing benefits to Consumers or to competition.
37. Respondent's acts and practices as described herein 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).

**Findings and Conclusions as to Respondent's Application of the Wrong State Law for Garnishment Exemptions (Unfair Practice)**

38. In numerous instances during the Relevant Period, when garnishing Consumers' Deposit Accounts, Respondent has applied the exemption laws of the Issuing State rather than the laws of the state where the Consumer resides, in circumstances where the applicable exemption law is that of the consumer's state of residence. Most states require their garnishment exemptions to be applied to their residents.
39. Respondent's conduct caused or was likely to cause substantial injury to Consumers. Because exemptions vary by state, applying the wrong state's exemption law will frequently harm Consumers by failing to apply exemptions of the Consumer's state of residence and thus failing to protect the full amount of exempt funds.
40. Consumers could not reasonably avoid this substantial injury. Consumers cannot control Respondent's policy of applying the exemption laws of the state where the court that issued the Garnishment Notice is located rather than the laws of the state where the Consumer resides. Further, Consumers are unlikely to understand which state's exemption law applies or any rights they may have to object to Respondent's failure to apply the proper exemptions to avoid the harm.

41. The substantial injury Respondent caused or was likely to cause to Consumers is not outweighed by countervailing benefits to Consumers or to competition.
42. Respondent's acts and practices as described herein constitute 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).

**Findings and Conclusions as to Respondent's Misrepresentations to Consumers about the Applicable State Garnishment Exemptions (Deceptive Practice)**

43. An act or practice is deceptive if it misleads or is likely to mislead a consumer, the consumer's interpretation is reasonable under the circumstances, and the misleading act or practice is material.
44. During the Relevant Period, by stating to Consumers that it has applied the exemption law of the Issuing State, Respondent has implicitly represented to Consumers that their rights to have certain funds exempted from garnishment were governed by the law of the Issuing State.
45. In fact, in most cases, the exemption rights of Consumers are not controlled by the law of the state where the court that issued the Garnishment Notice is located; rather, Consumers' exemption rights are usually determined by the law of the state where the Consumer resides.

46. Respondent's implied misrepresentations concerning which state's exemption law applies were likely to mislead Consumers acting reasonably under the circumstances.
47. These misrepresentations were material because they concerned the terms and limitations of Respondent's transactions with Consumers. Consumers relying on these misrepresentations would have been misinformed about the protections available to them, and potentially dissuaded from seeking to effectuate such protections.
48. Respondent's acts and practices as described herein constitute deceptive acts or practices in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

**Findings and Conclusions as to Respondent's Use of a Deposit Agreement That Requires Consumers to Direct It Not to Contest Legal Process and Waive Its Liability (Unfair Practice)**

49. Respondent requires Consumers to agree to its lengthy Deposit Agreement to open a Deposit Account. The Deposit Agreement states that Consumers "direct" Respondent "not to contest [any] legal process," including process "served at locations other than the location where the account, property, or records are held." The Deposit Agreement further states that Respondent has "no liability to [the Consumer] if [Respondent] accept[s] and compl[ies] with legal process as provided in this section or by law."

50. Many federal and state exemption rights and similar protections cannot be waived.
51. Respondent's practice of requiring Consumers to "direct" Respondent not to contest legal process and to waive its liability for its actions regarding all legal process causes or is likely to cause substantial injury to Consumers by (1) purportedly allowing Respondent to process Out-of-State Garnishment Notices issued by a Restriction State it knows or should know to be improper; and (2) preventing Consumers from pursuing any legal claims against Respondent for improperly handling Garnishment Notices.
52. This injury is not reasonably avoidable by Consumers. Consumers cannot negotiate the terms of their deposit agreements, are unlikely to realize that the waiver language will eliminate their ability to pursue legal remedies against Respondent related to garnishment, and are unlikely to be able to shop for other bank accounts based on this term.
53. The substantial injury Respondent caused or was likely to cause to Consumers is not outweighed by countervailing benefits to Consumers and competition.
54. Respondent's acts and practices as described in Paragraphs 22–26 constitute 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).

**Findings and Conclusions as to Respondent's Communications to Consumers about the Garnishment of Their Deposit Accounts (Deceptive Practice)**

55. During the Relevant Period, Respondent represented in communications to Consumers that because they signed a Deposit Agreement that included broad language directing Respondent not to contest legal process, Consumers had waived their right to hold Respondent liable for improperly responding to Garnishment Notices.
56. In fact, regardless of the language in the Deposit Agreement, Consumers have the right to go to court to attempt to prevent wrongful garnishments or seek to have the appropriate state or federal exemptions applied. Many federal and state exemption rights and similar protections cannot be waived.
57. These misrepresentations were likely to mislead Consumers acting reasonably under the circumstances because they were express statements in documents that appeared to state Consumers' rights under the circumstances.
58. These misrepresentations were material because they concerned the terms and limitations of Respondent's Deposit Agreement with Consumers. Consumers relying on these misrepresentations would have been

misinformed about the protections available to them, and potentially dissuaded from seeking to effectuate such protections.

59. Respondent's acts and practices as described herein constitute deceptive acts or practices in violation of Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531(a) and 5536(a)(1)(B).

## **CONDUCT PROVISIONS**

**V.**

### **Prohibited Conduct**

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

60. 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, in connection with processing Garnishment Notices, including responding to Out-of-State Garnishment Notices, freezing or holding Consumers' accounts in connection with processing Out-of-State Garnishment Notices except as provided herein, turning over funds in response to Out-of-State Garnishment Notices issued by courts in Restriction States except as directed by a court to do so, or imposing fees on Consumers related to Garnishment Notices issued by courts in Restriction States.

61. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, must take the following affirmative actions:

Out-of-State Garnishments

- a. Compile and maintain accurate up-to-date information about the limits of Out-of-State Garnishment Notices issued by each state where Respondent processes such Notices, maintains a financial center, or otherwise is subject to the state's jurisdiction, including identifying all Restriction States.
- b. Create, maintain, and implement policies and procedures that accurately and consistently comply with the current, relevant state and federal laws regarding Out-of-State Garnishment Notices.
- c. Train Respondent personnel responsible for processing Garnishment Notices on the policies and procedures for Out-of-State Garnishment Notices created and maintained in subpart (b) and monitor compliance with those policies and procedures.
- d. Answer or otherwise reply to all facially valid Out-of-State Garnishment Notices by notifying the issuing court or other issuing entity that the relevant Deposit Account is not located in the state from which the Out-of-State Garnishment Notice was issued. If such

notice is provided to an entity other than a court, the form and substance of the notice must be included in the Compliance Plan as described in Paragraphs 63–65.

- e. Answer or otherwise reply to all facially valid Out-of-State Garnishment Notices issued by a court in the Restriction States by notifying the issuing court or other issuing entity if Respondent does not have garnishable assets located within the state.
- f. Cease freezing or holding funds in an Out-of-State Deposit Account on receipt of an Out-of-State Garnishment Notice from any Restriction State, unless required to do so under state law.
- g. Unless prohibited by applicable law, provide notice to the named Consumer that Respondent has received a Garnishment Notice and has acted upon (or will act upon) the Garnishment Notice, identifying
  - (i) the Deposit Accounts responsive or potentially responsive to the Garnishment Notice; (ii) the state(s) where each of the Deposit Accounts is located according to Respondent's records; (iii) the Issuing State; and (iv) the Consumer's state of residence as determined by Respondent's current records.
- h. Maintain records of each Out-of-State Garnishment Notice Respondent receives (however, Respondent is not required to keep

records of Garnishment Notices it rejects or takes no action on), what notice Respondent provided to the issuing court or other issuing entity in response, and whether Respondent froze, held, or turned over funds to the judgment creditor.

#### State Exemption Rights

- i. Compile and maintain accurate up-to-date information about state-specific garnishment exemptions in every state where Respondent maintains Consumers' Deposit Accounts or has a financial center.
- j. Create, maintain, implement, and routinely update policies and procedures that accurately and consistently follow the relevant state laws regarding state garnishment exemptions.
- k. Train Respondent personnel responsible for processing Garnishment Notices on the policies and procedures for state garnishment exemptions created and maintained under subpart (j) and monitor compliance with those policies and procedures.
- l. For those states where Respondent is required to apply certain state exemptions on behalf of the Consumer, Respondent must accurately and consistently apply the correct state's exemptions pursuant to the information compiled under subpart (i) for each Garnishment Notice it processes, and refrain from garnishing exempted funds.

- m. For those states where Respondent is not required to apply state exemptions on behalf of the Consumer, Respondent must notify each Consumer named in a Garnishment Notice that Respondent has processed (or will process) that:
  - i. the Garnishment Notice may identify exemptions under the law of the state where the judgment was obtained (*i.e.*, the Issuing State); and
  - ii. if they reside outside of the Issuing State, the Consumer may be entitled to claim exemptions pursuant to the law of their state of residence and that they may wish to consult an attorney.

The form and substance of these notices must be included in the Compliance Plan as described in Paragraphs 63–65.

#### Deposit Agreement Waiver Language

- n. Cease including in Respondent's Deposit Agreement or any other Consumer-facing document the language identified in Paragraphs 22–26 of this Consent Order, referring to Respondent's standard Deposit Agreement or any similar language requiring Consumers to direct Respondent not to contest legal process on their behalf with respect to processing Garnishment Notices or requiring Consumers to waive consumer protection rights.

- o. Cease communicating to Consumers that they have purportedly waived any rights regarding garnishment or Garnishment Notices as a result of entering into Respondent's Deposit Agreement.

Credit Reporting

- o. In instances where (i) the Deposit Accounts of Affected Consumers went into overdraft status within 30 days of Respondent charging the Consumers Garnishment-Related Fees resulting from unlawful Out-of-State Garnishment Notices and (ii) as a result, Respondent reported the overdraft status of those accounts to Chex Systems, Inc. ("Chex") and/or Early Warning Services ("EWS"), Respondent shall instruct Chex, EWS, or any other consumer reporting agency to which Respondent has furnished the information in this subpart, to remove those reports from their respective databases.
62. Respondent must provide the appropriate staffing and resources necessary to comply with Paragraphs 63–65.

**VI.**

**Compliance Plan**

**IT IS FURTHER ORDERED** that:

63. Within 90 days of the Effective Date, Respondent must submit to the Enforcement Director for review and determination of non-objection a

comprehensive compliance plan designed to ensure that Respondent's garnishment-related conduct pertaining to Out-of-State Garnishment Notices and state exemptions as set forth in this Consent Order complies with all applicable 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 60–61, including identifying all Restriction States; and
  - b. Specific timeframes and deadlines for implementation of the steps described above.
64. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Respondent to revise it. If the Enforcement Director directs Respondent to revise the Compliance Plan, Respondent must revise and resubmit the Compliance Plan to the Enforcement Director within 30 days.
65. After receiving notification that the Enforcement 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:

66. The Board or a committee thereof must review all submissions (including plans, reports, and programs) required by this Consent Order prior to submission to the Bureau.
67. Although this Consent Order requires Respondent to submit certain documents for review or non-objection by the 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.
68. In each instance that this Consent Order requires the Board or a committee thereof 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 or a committee thereof on the status of compliance obligations; and

- c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

## **MONETARY PROVISIONS**

### **VIII.**

#### **Order to Pay Redress**

**IT IS FURTHER ORDERED** that:

69. Respondent must refund all Garnishment-Related Fees that were paid by Affected Consumers during the Relevant Period and cancel any unpaid Garnishment-Related Fees charged to Affected Consumers. The refunded amount will not be less than \$592,000.
70. Within 60 days of the Enforcement Director's non-objection of the Compliance Plan, 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.

71. The Redress Plan must explain how Respondent will refund all Garnishment-Related Fees to Affected Consumers and cancel any unpaid Garnishment-Related Fees charged to Affected Consumers and must:
  - a. Identify each Affected Consumer;
  - b. Describe the method used by Respondent to identify Affected Consumers, including Affected Consumers who no longer have active Deposit Accounts with Respondent;
  - c. Describe the method used by Respondent to calculate Garnishment-Related Fees;
  - d. State the total amount of Garnishment-Related Fees the Affected Consumers paid;
  - e. State the amount of Garnishment-Related Fees paid by each Affected Consumer;
  - f. State the total amount of unpaid Garnishment-Related Fees charged to Affected Consumers;
  - g. State the amount of unpaid Garnishment-Related Fees charged to each Affected Consumer;

- h. Describe the procedures for the issuance and tracking of redress to Affected Consumers, including how Respondent will issue and track redress to those Affected Consumers who no longer have active Deposit Accounts with Respondent;
  - i. Describe the process for providing redress to Affected Consumers;
  - j. Include the template of the communication that will be sent notifying Affected Consumers of their redress (“Redress Notification”), and, if the Redress Notification will be mailed, the form of the envelope that will contain the Redress Notification. The Redress Notification must include language explaining the manner in which the amount of redress was calculated and a statement that the refund payment is being made in accordance with the terms of this Consent Order;
  - k. Provide that Respondent will pay all costs of administering redress as required by this Consent Order; and
  - l. Set forth all procedures, deadlines, and timeframes for completing each step of the Redress Plan, consistent with the terms of this Consent Order.

72. Respondent must make reasonable attempts to obtain a current physical address for any Affected Consumer for a period of 360 days from the date

the redress was sent, during which period such amount may be claimed by such Affected Consumer upon appropriate proof of identity.

73. After completing the Redress Plan, if the amount of redress provided to Affected Consumers is less than the sum total of the amount calculated under Paragraph 71(d) of this Order, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference.
74. 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.
75. 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:

76. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$10,000,000 to the Bureau.
77. 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.
78. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
79. 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.

80. 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 any 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:

81. 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.
82. 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.
83. Under 31 U.S.C. § 7701, Respondent must furnish to the Bureau its taxpayer-identification numbers, unless it already has done so, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
84. 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:

85. 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.
86. 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.

87. Respondent must report any change in the information required to be submitted under Paragraph 85 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
88. Within 90 days of receiving non-objection to the Compliance Plan, and again one year after receiving non-objection to the Compliance Plan, Respondent must submit to the Enforcement 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 Consent Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
  - a. Describes in detail the manner and form in which Respondent has complied with the Redress Plan and Compliance Plan; and
  - b. Attaches a copy of each acknowledgment of receipt of this Consent Order obtained under Section XII, unless previously submitted to the Bureau.

**XII.**

**Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that:

89. 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.
90. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each member of its Board and executive officers, as well as to any managers, employees, outside counsel, or other agents and representatives who have non-ministerial responsibilities related to the subject matter of the Consent Order.
91. 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, outside counsel, or other agents and representatives who will have non-ministerial responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
92. 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.

93. 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 90–91 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 92.

### XIII.

#### **Recordkeeping**

#### **IT IS FURTHER ORDERED** that:

94. 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. Copies sufficient to show the form of Respondent's Deposit Agreement and communications with Consumers regarding Garnishment Notices;
  - e. All Consumer complaints and refund requests (whether received directly or indirectly, such as through a third party) regarding Respondent's processing of garnishments, and any responses to those complaints or requests;
  - f. Records showing, for each employee providing services related to garnishments, 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; and
  - g. Records showing, for all outside counsel providing services related to garnishments, the name of a point of contact, and the attorney's telephone number, email, physical, and postal address, job title or position, dates of service, and, if applicable, the reason for termination.
95. Respondent must make the documents identified in Paragraph 94 available to the Bureau upon the Bureau's request.

**XIV.**

**Notices**

**IT IS FURTHER ORDERED** that:

96. 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-0002*,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to [Enforcement\\_Compliance@cfpb.gov](mailto:Enforcement_Compliance@cfpb.gov) and to:  
Assistant Director for Enforcement  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552  
and  
Regional Director, CFPB Southeast Region  
Peachtree Summit Building  
401 W. Peachtree Street  
Atlanta, GA 30308

**XV.**

**Cooperation with the Bureau**

**IT IS FURTHER ORDERED** that:

97. 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:

98. 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.
99. 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.
100. 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:

101. 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.
102. 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:

103. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent. 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.

104. 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.
105. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPB, 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.
106. This Consent Order will terminate 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 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.

107. 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.
108. 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.
109. 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.

110. 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.
111. 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 4th day of May, 2022.

Rohit Chopra

Rohit Chopra  
Director  
Consumer Financial Protection Bureau