

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

**ADMINISTRATIVE PROCEEDING**

**File No. 2014-CFPB- 0004**

**In the Matter of:**

**Bank of America, N.A.; and  
FIA Card Services, N.A.**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (“CFPB”) has reviewed the practices of Respondents Bank of America, N.A. and FIA Card Services, N.A. (“the Bank,” as defined below) relating to add-on products and has identified violations of law. The CFPB hereby issues, pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5563 and 5565, this Consent Order (“Order”).

**ARTICLE I  
OVERVIEW**

1. The CFPB finds that the Bank and its Service Providers (as defined below) have engaged in violations of Sections 1031 and 1036 of the CFPA (collectively, “Section 1036”), 12 U.S.C. §§ 5531, 5536 in connection with the marketing, sales, delivery, servicing, and/or fulfillment of the Bank’s Credit Protection Covered Products (as defined below) and the billing of Identity Protection Covered Products (as defined below).

**ARTICLE II  
JURISDICTION**

2. The CFPB has jurisdiction over this matter pursuant to Sections 1053 and 1055 of the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5563, 5565.

**ARTICLE III**  
**STIPULATION**

3. The Bank has executed a Stipulation and Consent to the Issuance of Consent Order (“Stipulation”), which is incorporated by reference and is accepted by the CFPB. By this Stipulation, the Bank has consented to the issuance of this Order by the CFPB pursuant to Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any findings of fact or violations of law or wrongdoing, except that the Bank admits to the CFPB’s jurisdiction over the Bank and the subject matter of this action.

**ARTICLE IV**  
**DEFINITIONS**

4. For purposes of this Order, the following definitions shall apply:
- (a) “Add-On Product” shall mean any Bank-branded or co-branded consumer financial product or service, as defined by Section 1002(5) of the CFPA, 12 U.S.C. § 5481(5), which is sold by the Bank or its Service Providers as an optional add-on product to Bank credit cards and/or as an optional add-on product to consumer financial products of the Bank.
  - (b) “Bank of America” or the “Bank” shall mean Bank of America, N.A., Charlotte, North Carolina, and FIA Card Services, N.A., and their successors and assigns, and excludes Service Providers, as defined in Paragraph 4(t), below.
  - (c) “Board” shall mean the Boards of Directors of Bank of America, N.A. and FIA Card Services, N.A.
  - (d) “Class Action Settlement” shall mean the settlement agreement FIA Card Services, N.A. and Bank of America Corporation entered into to resolve seven putative class actions related to its credit protection products that

had been consolidated into a multidistrict litigation in the Northern District of California, *In re Bank of America Credit Protection Marketing and Sales Practices Litigation*, No. 3:11-md-02269.

- (e) “Covered Products” shall mean, collectively, “Credit Protection Covered Products” and “Identity Protection Covered Products.”
- (f) “Customer” means any person who was enrolled in a Covered Product.
- (g) “Credit Protection Covered Products” shall mean the Bank’s Credit Protection Plus and Credit Protection Deluxe products.
- (h) “Credit Protection Product” shall mean any Add-On Product that purports to allow a Customer enrolled in the Credit Protection Product to request (i) cancellation of some or all of the credit card balance in certain circumstances, such as death, or (ii) cancellation of minimum credit card payments in certain circumstances such as unemployment, disability, or other enumerated events. “Credit Protection Product” includes the Credit Protection Covered Products.
- (i) “Credit Protection Product Fees” shall mean the fees charged by the Bank or a Credit Protection Service Provider to a Credit Protection Eligible Customer’s Account for any Credit Protection Product or Products. Credit Protection Product Fees shall not include finance charges, over-limit fees, or interest associated with Credit Protection Products.
- (j) “Credit Protection Relevant Time Period” shall mean October 1, 2010 through March 31, 2013.

- (k) “Credit Protection Service Provider” refers to any direct customer-facing Service Provider that provided marketing, sales, delivery, servicing, and/or fulfillment of Credit Protection Products to Bank Customers.
- (l) “Effective Date” shall mean the date on which the Order is issued.
- (m) “Identity Protection Covered Products” refers to the identity theft protection products, “Privacy Guard,” “PrivacySource” and “Privacy Assist,” which included but were not limited to credit monitoring and credit report retrieval services and were marketed and sold to Bank Customers or other consumers by the Bank or its Identity Protection Service Providers pursuant to a contract between the Bank and an Identity Protection Service Provider.
- (n) “Identity Protection Products” shall mean any Add-On Product that purported to provide credit monitoring and credit report retrieval services. “Identity Protection Product” includes the Identity Protection Covered Products.
- (o) “Identity Protection Service Provider” refers to the Bank’s Service Providers, including, but not limited to, Trilegiant Corporation and Intersections, Inc., that provided marketing, sales, delivery, servicing, and/or fulfillment of Identity Protection Covered Products to Bank Customers and/or other consumers.
- (p) “Identity Protection Product Fees” are the fees charged by the Bank or Identity Protection Service Provider for an Identity Protection Covered Product.

- (q) “Products” shall mean, collectively, “Credit Protection Products” and “Identity Protection Products.”
- (r) “Regional Director” shall mean the Regional Director for the Office of Supervision for the Southeast Region for the Consumer Financial Protection Bureau.
- (s) “Related Consumer Action” shall mean a private damages action by or on behalf of one or more consumers brought against the Bank based on substantially the same facts as set forth in Article V of this Order, including, but not limited to, *In re Bank of America Credit Protection Marketing and Sales Practices Litigation*, No. 3:11-md-02269.
- (t) “Service Provider” shall mean any service provider, as defined in Section 1002(26) of the CFPA, 12 U.S.C. § 5481, that provides services for Add-On Products pursuant to a contractual obligation to the Bank.

**ARTICLE V**  
**FINDINGS AND CONCLUSIONS**

The CFPB finds the following:

5. Bank of America, N.A. is a “covered person” as that term is defined by 12 U.S.C. § 5481(6) and is an insured depository institution with assets greater than \$10 billion within the meaning of 12 U.S.C. § 5515(a).

6. FIA Card Services, N.A. is a “covered person” as that term is defined by 12 U.S.C. § 5481(6) and is an insured depository institution with assets greater than \$10 billion within the meaning of 12 U.S.C. § 5515(a).

**Credit Protection Products**

7. Credit Protection Plus was an optional debt cancellation product offered to Bank of America credit card customers. The last version of Credit Protection Plus that the Bank marketed to customers was marketed as being able to cancel up to twice the customer's minimum monthly payment for up to 18 months for Involuntary Unemployment, Disability, Hospitalization, and Leave of Absence (each as defined in the product's terms and conditions); up to three minimum monthly payments for certain defined Life Events, including Marriage, Divorce, Birth/Adoption, New Residence, Graduation, Entering College, and Retirement; and up to \$25,000 of the customer's balance upon the customer's death. When last marketed to customers, the monthly fee for this product was 0.85 percent of the customer's monthly balance.

8. Credit Protection Deluxe was an optional, flat-fee debt cancellation product offered to Bank of America credit card customers. The last version of Credit Protection Deluxe that the Bank marketed to customers was marketed as being able to cancel up to \$500 per month (up to \$2000) for Involuntary Unemployment, Disability, Hospitalization, and Leave of Absence (each as defined in the product's terms and conditions), and up to \$200 for the same Life Events covered by Credit Protection Plus. When last marketed to customers, the fee for this product was \$15.99 per month.

9. To obtain Credit Protection Plus or Credit Protection Deluxe benefits for either hardship or life events, the Bank required customers to request benefits through the Bank's benefit approval process. To continue receiving Credit Protection Plus or Credit Protection Deluxe benefits for certain hardship events, customers had to resubmit forms and documentation throughout their benefit period.

10. During the Credit Protection Relevant Time Period, Bank of America Call Center Representatives (CSRs) solicited cardholders who called the Bank to activate their cards, or to obtain other customer service, to enroll in the Credit Protection Covered Products.

11. During the Credit Protection Relevant Time Period, the Bank also engaged Credit Protection Service Providers to conduct inbound and outbound telemarketing of the Credit Protection Covered Products to customers.

12. During the Credit Protection Relevant Time Period, the Bank and its Service Providers failed to adequately inform some customers that they were purchasing the Credit Protection Covered Products, or misrepresented to some customers the costs, terms, benefits, and benefits process of the Credit Protection Covered Products. During the relevant time period improper telemarketing practices included:

- (a) representing that the first 30 days of coverage were free of charge when, in fact, by enrolling, Customers were agreeing to purchase the Credit Protection Covered Products and to begin incurring charges unless they cancelled within the 30-day review period, in which case any fees previously paid would be reimbursed;
- (b) representing that additional steps were required to enroll in or purchase the Credit Protection Covered Products after the telemarketing call;
- (c) representing that customers were consenting to receive additional information about the Credit Protection Covered Products, when, in fact, the Bank was enrolling Customers in the Credit Protection Covered Products;

- (d) representing that Customers could receive benefits for a duration longer than permitted under the terms and conditions of the Credit Protection Covered Products; and
- (e) representing that Customers would be entitled to an “up to \$25,000 death benefit” by enrolling in Credit Protection Plus when, in fact, enrollment in Credit Protection Plus did not entitle Customers or their survivors to \$25,000 upon the Customer’s death; Credit Protection Plus could only cancel the amount owed on the decedent Customer’s credit card account up to \$25,000.
- (f) representing that the benefits covered by the Credit Protection Covered Products were automatic upon notice of the qualifying event when, in fact, the programs required a benefit request submission and approval process.

13. The Bank’s compliance monitoring, Service Provider management, and quality assurance yielded ineffective oversight and did not, in certain instances, prevent, identify, or correct the improper sales practices in marketing the Credit Protection Covered Products.

14. The Bank voluntarily ceased marketing and selling Credit Protection Products. The Bank stopped marketing and selling Credit Protection Products in August 2012 and canceled all existing accounts as of September 1, 2013.

15. Section 1036(a)(1)(B) of the CFPA prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).

16. Statements and omissions by the Bank or its Service Providers, as set forth in the preceding Paragraphs, are material because they are likely to affect a consumer’s choice or



conduct regarding the Credit Protection Covered Products and are likely to mislead consumers acting reasonably under the circumstances.

17. The representations of the Bank, through its CSRs and Credit Protection Service Providers with respect to Credit Protection Covered Products during the Credit Protection Relevant Time Period, constitute deceptive practices in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPB, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B). These violations affected approximately 1.4 million Customers.

### **Identity Protection Products**

18. From at least October 2000 to approximately December 2011, the Bank and its Service Providers marketed and sold the Identity Protection Covered Products, which included credit monitoring and credit report retrieval, to Bank Customers and other consumers.

19. To provide the credit monitoring and credit report retrieval services, the Bank, through its Service Providers, was required by the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681b to have a “permissible purpose” to obtain Customers’ credit information from the credit reporting agencies. Among other reasons, a credit reporting agency may release a credit report in accordance with a consumer’s “written instructions.” 15 U.S.C. § 1681b(a)(2).

20. Accordingly, Customers and other consumers who enrolled in the Identity Protection Covered Products were required to provide sufficient authorization before their credit bureau reports could be accessed. Customers of the Identity Protection Covered Products were provided the materials necessary to submit this authorization, but until the authorization was submitted, the Bank and its Service Providers could not provide Customers the full credit monitoring and/or credit report retrieval services of the Identity Protection Covered Product in which they were enrolled.

21. In many cases, however, some period of time passed before the Bank or its Service Providers obtained the Customers' authorizations, or the Bank or its Service Providers never obtained the Customers' authorizations. From at least October 2000 to approximately September 2011, the Bank, through its Service Providers, billed the full fee of the Identity Protection Covered Product to customers who were not receiving all of the credit monitoring and/or credit report retrieval benefits of the product.

22. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).

23. The Bank's and Service Providers' acceptance of monthly payments while failing to provide credit monitoring and/or credit report retrieval services has resulted in substantial injury to approximately 1.5 million consumers in the amount of at least \$459 million for Identity Protection Covered Products. This injury was not reasonably avoidable by consumers and is not outweighed by any countervailing benefit to the consumers or to competition.

24. By reason of the foregoing billing practices for its Identity Protection Covered Products, the Bank and its Service Providers engaged in unfair practices in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

**ARTICLE VI**  
**ORDER TO CEASE AND DESIST AND TO TAKE AFFIRMATIVE ACTIONS**

**IT IS HEREBY ORDERED**, pursuant to Sections 1053 and 1055 of the CFPA, that:

25. The Bank and its officers, agents, servants, employees, and attorneys, whether acting directly or indirectly, shall cease and desist and shall take reasonable measures to ensure that its Service Providers and other agents cease and desist from engaging in violations of law or

regulation in connection with the marketing and administration of Credit Protection Products and in the billing and administration of Identity Protection Products.

26. The Bank shall correct all violations of law, as described herein, and shall implement procedures to prevent their recurrence. The Bank's actions as required by this Article shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

27. The Bank shall not make, or allow to be made, any material deceptive representation, statement, or omission, expressly or by implication, in the marketing materials, telemarketing scripts, and/or sales presentation used to solicit any customer or prospective customer in connection with any Credit Protection Product, including but not limited to misrepresentations or omissions as to the following:

- (a) any and all fees, costs, expenses and charges associated with the Credit Protection Product;
  - (b) that a product is optional and not required for the customer to activate or use his or her credit card;
  - (c) that accessing the Credit Protection Product's benefits requires minimal action by the consumer;
  - (d) the benefits of any Credit Protection Product;
  - (e) any material conditions and restrictions related to the Credit Protection Product;
  - (f) the purpose of sales calls and/or sales portions of servicing or other calls;
- or

- (g) payment terms for a Credit Protection Product, including the actual date a Customer will be charged for a Credit Protection Product or incur charges for a Credit Protection Product.

28. The Bank represents that it stopped substantially all marketing, soliciting, offering for sale, and selling the Identity Protection Products to new enrollees by December 2011 and stopped marketing, soliciting, offering for sale, and selling Credit Protection Products on or before August 2012.

29. The Bank and its officers, agents, servants, employees, and attorneys, whether acting directly or indirectly, shall be prohibited from marketing, soliciting, offering for sale and selling Credit Protection Products and Identity Protection Products, unless it submits to the CFPB a compliance plan (the "Compliance Plan") specifically designed to prevent all violations of applicable Federal consumer financial laws in the sale and administration of Identity Protection Products and/or Credit Protection Products, as applicable.

- (a) Any Compliance Plan concerning Credit Protection Products shall:
  - (i) Address the manner in which marketing and soliciting of Credit Protection Products may occur, including, but not limited to, prohibiting the Bank or its representatives or Service Providers from marketing or soliciting the Products until after activation is completed and the consumer is informed that listening to the solicitation is optional;
  - (ii) Address the manner in which the Bank informs Customers and prospective customers of any and all fees, costs, expenses and charges associated with the Credit Protection Product; the payment

terms for a Credit Protection Product, including the actual date a Customer will be charged for a Product or incur charges for the Product; the benefits of any Credit Protection Product; the process of accessing the benefits of any Credit Protection Product; and any material conditions, benefits, and restrictions related to the Credit Protection Products;

- (iii) Describe how the Bank will disclose that a product is optional and not required for the Customer to activate or use his or her credit card.
- (b) Any Compliance Plan concerning Identity Protection Products shall:
  - (i) Address the manner in which the Bank informs Customers and prospective customers that any credit monitoring services will not be activated until receipt of customer authorization for the Bank to access their credit information at credit reporting agencies;
  - (ii) Describe how the Bank will avoid billing Customers during a period before the Bank or Service Provider receives authorization to access credit information from each credit reporting agency and during a period when the credit reporting agency has not yet processed authorizations submitted by Customers.

30. The Bank shall submit any Compliance Plan to the Regional Director at least ninety (90) days prior to marketing, soliciting, offering for sale, or selling Credit Protection Products and/or Identity Protection Products to new enrollees, as applicable, for prior determination of supervisory non-objection. The Bank shall adhere to the Compliance Plan.

31. Within one-hundred twenty (120) days of the Effective Date, the Bank shall submit to the Regional Director, for review and written determination of supervisory non-objection, an acceptable plan containing a description of the actions that are necessary and appropriate to achieve compliance with this Order (the “Action Plan”). The Board or a Committee thereof shall ensure the Action Plan is submitted to the Regional Director for prior determination of supervisory non-objection.

32. The Action Plan shall specify timelines for completion of each of the requirements of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order, unless modified in writing by the Regional Director.

33. The Action Plan shall include a review, and if necessary, the revision of the Add-On Products related portions of its written Service Provider Management Program to ensure that all Add-On Products which are marketed and sold by the Bank comply with applicable Federal consumer financial law. At a minimum, the Service Provider Management Program shall require:

- (a) An analysis to be conducted by the Bank, prior to the Bank entering into a contract with the Service Provider, of the ability of the Service Provider to perform the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s) in compliance with all applicable Federal consumer financial laws and the Bank’s related policies and procedures;
- (b) For new and renewed contracts, a written contract between the Bank and the Service Provider, which sets forth the responsibilities of each party, especially:

- (i) the Service Provider's specific performance responsibilities and duty to maintain adequate internal controls over the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Products;
  - (ii) the Service Provider's responsibilities and duty to provide adequate training on compliance with all applicable Federal consumer financial laws and the Bank's related policies and procedures to all Service Provider employees or agents engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s);
  - (iii) granting the Bank the authority to conduct periodic onsite reviews of the Service Provider's controls, performance, and information systems as they relate to the marketing, sales, delivery, servicing, and fulfillment of services for the Add-On Product(s); and
  - (iv) the Bank's right to terminate the contract if the Service Provider materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph.
- (c) Periodic review by the Bank of the Service Provider's controls, performance, and information systems related to Add-On Products.

34. In addition, within one-hundred twenty (120) days of this Order, an appropriate independent qualified group within the Bank shall review and, if necessary, revise the written Unfair, Deceptive, or Abusive Acts or Practices Policy statement ("UDAAP Policy") to ensure the UDAAP Policy requires, at minimum:

- (a) A written comprehensive assessment, to be conducted on an annual basis, of the unfair, deceptive, and abusive practices (“UDAAP”) risk for existing or new Add-On Products and for any changes to existing Add-On Products, including, but not limited to the UDAAP risk of the governance, control, marketing, sales, delivery, servicing, and fulfillment of services for new Add-On Products and existing Add-On Products, including the UDAAP risk of marketing and sales practices;
- (b) The development and implementation of written policies and procedures to effectively manage, prevent, detect, and mitigate, on an on-going basis, the risks identified in the written assessment required by the preceding Paragraph;
- (c) The recording of all telephone calls in which Add-On Products are marketed or sold following the Effective Date by the Bank or through a Service Provider to Bank customers, which recordings shall be retained for a period of at least 25 months from the date of the call;
- (d) The recording of all telephone calls in which a customer enrolled in an Add-On Product marketed or sold following the Effective Date by the Bank or through a Service Provider indicates that he or she did not authorize, does not want, does not need, or wishes to cancel the Add-On Product, which recordings shall be retained for a period of at least 25 months from the date of the call;
- (e) Comprehensive written procedures for providing appropriate training on applicable Federal consumer financial laws and the Bank’s related policies



and procedures, including, but not limited to, unfair, deceptive, and abusive acts and practices, to appropriate Bank employees and Service Provider call agents who market or sell Add-On Products during in-bound or out-bound telephone calls or who engage in retention efforts during telephone calls in which a Bank customer indicates that he or she did not authorize, does not want, does not need, or wishes to cancel the Add-On Product;

- (f) Comprehensive written procedures for providing appropriate training on applicable Federal consumer financial laws and the Bank's related policies and procedures as related to Add-On Products to appropriate Bank employees and Service Provider's employees or agents who monitor telephone calls as required by Paragraph 34(i);
- (g) Comprehensive written policies and procedures for identifying and reporting any violation of applicable Federal consumer financial laws and the Bank's related policies and procedures as related to Add-On Products by the Bank's employees and Service Provider's employees or agents, in a timely manner, to a specified executive risk or compliance manager at the Bank. The manager to whom such reports are made shall be independent of the unit overseeing the sale and marketing of Add-On Products;
- (h) Development of training materials relating to identifying and responding to violations of applicable Federal consumer financial laws as related to Add-On Products that will be incorporated into the existing annual compliance training for appropriate employees;

- (i) Independent telephone call monitoring of Bank employees and Service Provider's employees or agents who are engaged in the marketing or sale of Add-On Products by qualified personnel who have training in identifying and reporting violations of applicable Federal consumer financial laws and the Bank's related policies and procedures;
- (j) Reporting, on at least a monthly basis by the independent unit responsible for conducting the monitoring required by Paragraph 34(i), of its findings from the telephone call monitoring described in Paragraph 34(i) to a specified executive risk or compliance manager at the Bank who is independent of the unit overseeing the sales and marketing of these Add-On Products; and
- (k) Written policies and procedures to ensure that the risk management, internal audit, Service Provider administration, and corporate compliance programs have the requisite authority and status within the Bank so that appropriate reviews of Add-On Products marketed or sold by the Bank or through Service Providers may occur and deficiencies are identified and properly remedied.

35. Within one-hundred twenty (120) days of the Effective Date, the Bank shall submit its Action Plan, the Add-On Products related portions of the Service Provider Management Program, and the Add-On Products related portions of the UDAAP Policy to the Regional Director for prior determination of supervisory non-objection.

36. Upon receipt by the Bank of a determination of supervisory non-objection from the CFPB to the Action Plan, the Add-On Products related portions of the Service Provider

Management Program, and the Add-On Products related portions of the UDAAP Policy, the Board, or a Committee thereof, shall ensure the Bank's adoption, implementation, and adherence to the Action Plan, the Add-On Products related elements of the Service Provider Management Program, and the Add-On Products related portions of the UDAAP Policy.

37. Any material proposed changes to or deviations from the approved Service Provider Management Program and UDAAP Policy, where such proposed changes or deviations relate to Add-On Products, shall be submitted in writing to the CFPB for determination of supervisory non-objection.

38. The Bank's Internal Audit department shall periodically conduct an assessment of the Bank's compliance with the Service Provider Management Program and its UDAAP Policy in connection with the marketing, sales, delivery, servicing, and fulfillment of services for Add-On Products. Such assessments shall occur within one-hundred twenty (120) days after the Bank's receipt of a determination of supervisory non-objection to the Service Provider Management Policy and the UDAAP Policy, and periodically thereafter, and the findings shall be memorialized in writing. Within thirty (30) days of completing each assessment, Internal Audit shall provide its written findings to the Audit Committee and the Regional Director.

**ARTICLE VII**  
**THE AUDIT COMMITTEE**

39. The Bank's existing Audit Committee, which is composed of a majority of independent directors of the Bank or its holding company, shall be responsible for monitoring and coordinating the Bank's compliance with the provisions of this Order, and approving measures necessary to ensure compliance with the remaining Articles of this Order (unless other specific approvals are required).

40. Within one-hundred twenty (120) days of the Effective Date, and thereafter within thirty (30) days after the end of each calendar quarter, the Audit Committee shall submit a written progress report to the Board setting forth in detail the actions taken to comply with this Order, and the results and status of those actions.

41. The Board shall forward a copy of the Audit Committee's report, with any additional comments by the Board, to the Regional Director within ten (10) days of the first Board meeting following receipt of such report, unless additional time is granted by the Regional Director through a written determination of supervisory non-objection.

**ARTICLE VIII**  
**ROLE OF THE BOARD**

42. The Board shall ensure that all submissions (including plans, reports, programs, policies, and procedures) required by this Order are submitted to the Regional Director.

43. Although this Order requires the Bank to submit certain documents for the determination of non-objection by the Regional Director, the Board shall have the ultimate responsibility for proper and sound management of the Bank and for ensuring that the Bank complies with Federal consumer financial laws and this Order. With the prior non-objection of the Regional Director, the Board may delegate certain of the approval or reporting obligations included herein to the Audit Committee.

44. In each instance in this Order in which the Board is required to ensure adherence to, or undertake to perform certain obligations of the Bank, the Board, directly or through the Audit Committee, shall:

- (a) Authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;

- (b) Require the timely reporting by the Bank management of such actions directed by the Board to be taken under this Order;
- (c) Follow up on any material non-compliance with such actions in a timely and appropriate manner; and
- (d) Require corrective action be taken in a timely manner of any material non-compliance with such actions.

**ARTICLE IX**  
**ORDER FOR REDRESS**

45. The Bank shall make redress, as set forth in Paragraphs 47 through 52 of this Article, in accordance with the Redress Plan required by Paragraph 53 of this Article, to all Credit Protection Eligible Customers and Identity Protection Eligible Customers as defined in Paragraphs 47(a) and 50(a) of this Article.

46. If the Bank claims to have made any restitution prior to the Effective Date of this Order that complies with the requirements of this Order, the Bank shall provide appropriate proof of such restitution to the Regional Director concurrent with the Redress Plan required by Paragraph 53 of this Article. Any redress paid to an Identity Protection Eligible Customer pursuant to the order issued by the Comptroller of the Currency, shall not be construed as requiring the Bank to provide a duplicative restitution payment to that Customer under this Order.

**Credit Protection Redress**

47. For purposes of Credit Protection Redress, the following definitions shall apply:
- (a) “Credit Protection Eligible Customer” is a Customer who, with respect to each Credit Protection Covered Product, was enrolled in a Credit Protection Covered Product through inbound or outbound telemarketing,

and was billed a Credit Protection Product Fee during the Credit Protection Relevant Time Period, and either (1) did not activate and receive Credit Protection Covered Product benefits at any time while enrolled in the product, or (2) activated and received Credit Protection Covered Product benefits while enrolled, but made a separate request for benefits that was denied or closed.

48. Credit Protection Redress shall include the following:

- (a) The redress amount paid to each Credit Protection Eligible Customer shall include, as applicable to each Credit Protection Eligible Customer:
  - (i) If the Credit Protection Eligible Customer was enrolled in the product for 364 days or less and did not make a benefit request that was denied or closed, all Credit Protection Product Fees charged during the Credit Protection Relevant Time Period;
  - (ii) If the Credit Protection Eligible Customer was enrolled in the product for 365 days or more and did not make a benefit request that was denied or closed, or lodge a complaint, of which the Bank has a record, stating that he or she did not authorize enrollment, 300 days of Credit Protection Product Fees charged during the Credit Protection Relevant Time Period (based on the average daily fee paid by the consumer during the Credit Protection Relevant Time Period);
  - (iii) If the Credit Protection Eligible Customer made any request for benefits that was either denied or closed (including Credit

- Protection Eligible Customers who may have received a benefit in response to another request), all Credit Protection Product Fees charged during the Credit Protection Relevant Time Period; or
- (iv) If, prior to the Effective Date, the Credit Protection Eligible Customer lodged with the Bank or the CFPB a complaint, of which the Bank has a record, stating that he or she did not authorize enrollment in the Credit Protection Covered Products, all Credit Protection Product Fees charged during the Credit Protection Relevant Time Period.
- (b) Credit Protection Redress shall also include: (1) a reduction in charged-off balances for Credit Protection Eligible Customers that is attributable to Credit Protection Product Fees charged during the Credit Protection Relevant Time Period not included in the redress amounts described above; and (2) the benefits provided to customers as a result of a six-month no-cost protection period (March 1, 2013 through September 1, 2013) provided to all Customers who were enrolled in the Credit Protection Covered Products as of March 1, 2013.
- (c) Credit Protection Redress shall allow for a reduction in the amount of redress provided to a Credit Protection Eligible Customer by: (1) the amount of any refunded Credit Protection Product Fees a Credit Protection Eligible Customer received prior to the Effective Date and (2) the amount of any award a Credit Protection Eligible Customer received through the Class Action Settlement.

49. The estimated value of the restitution and additional redress to Credit Protection Eligible Customers as set forth in Paragraphs 48(a) and 48(b), after applicable reductions as set forth in Paragraph 48(c), is \$268 million. The estimated value of the restitution and additional redress to Credit Protection Eligible Customers will be validated as part of the Redress Review.

**Identity Protection Redress**

50. For the purposes of Identity Protection Redress, the following definitions shall apply:

- (a) “Identity Protection Eligible Customer” is any customer who, between October 2000 and September 2011, enrolled in an Identity Protection Covered Product and who was Unprocessable during any portion of his or her enrollment.
- (b) “Identity Protection Reimbursement End Date” is the date on which the Identity Protection Eligible Customer’s Unprocessable status ended.
- (c) “Identity Protection Reimbursement Start Date” is the date on which the Identity Protection Eligible Customer entered Unprocessable status.
- (d) “Unprocessable” refers to the status of a Customer who, at a given time, was being billed for an Identity Protection Covered Product but who, for any reason (i) was not receiving full credit monitoring; (ii) was receiving partial credit monitoring and/or credit report retrieval and had not received notice of the partial monitoring or credit report retrieval; and/or (iii) was not receiving credit report retrieval benefits.

51. The redress amount paid to each Identity Protection Eligible Customer shall include, as applicable to each Identity Protection Eligible Customer:



- (a) The sum of:
  - (i) The full amount of Identity Protection Covered Product Fees paid by an Identity Protection Eligible Customer from his or her Identity Protection Reimbursement Start Date through his or her Identity Protection Reimbursement End Date;
  - (ii) The full amount of any overlimit fees, as calculated pursuant to the methodology in the Redress Plan, paid by an Identity Protection Eligible Customer from his or her Identity Protection Reimbursement Start Date through his or her Identity Protection Reimbursement End Date; and
  - (iii) The amount of the estimated finance charges, as calculated pursuant to the methodology in the Redress Plan concerning Identity Protection Redress, paid by an Identity Protection Eligible Customer on Identity Protection Covered Product Fees from his or her Identity Protection Reimbursement Start Date through his or her Identity Protection Reimbursement End Date.
- (b) Less any amount that was a previous refund of the fees and charges described above in Subection (a) of this Paragraph.

52. Notwithstanding Paragraphs 48 and 51, no Customer shall be precluded from receiving redress with respect to more than one Covered Product. For any Customer who is eligible with respect to more one than Covered Product, the Customer's redress will be determined for each Covered Product separately pursuant to Paragraphs 48 and 51 above.

**Redress Plan**

53. Within ninety (90) days of the Effective Date, the Bank shall prepare and submit a Redress Plan (“Redress Plan”) to the Regional Director for review and non-objection. The Regional Director shall have the discretion to make a determination of non-objection to the Redress Plan or to direct the Bank to revise the Plan, consistent with the terms of this Order. The Regional Director shall notify the Bank in writing of his or her objection or non-objection to the Plan. In the event the Regional Director directs the Bank to revise the Redress Plan, the Bank shall make revisions and resubmit the Redress Plan to the Regional Director within twenty (20) days.

54. The Redress Plan shall provide processes covering all Credit Protection Eligible and Identity Protection Eligible Customers regardless of their current account status with the Bank, including open accounts, closed accounts with and without a balance, and charged off accounts.

55. The Bank represents that it has completed a plan to reimburse Identity Protection Eligible Customers for certain Identity Protection Covered Product Fees and associated fees and charges that they paid. This plan shall be documented as part of the Redress Plan, and shall be subject to the requirements of this Order. The Redress Plan shall include an accounting of amounts the Bank has already reimbursed to Identity Protection Eligible Customers. If any additional redress is required, it shall be provided consistent with the process previously used to provide redress to Identity Protection Eligible Customers.

56. The process for providing Credit Protection Redress shall include the following requirements:

- (a) For any open credit card account, the Bank shall provide a credit posted to the account, regardless of whether the crediting of a Customer results in a credit balance.
- (b) For any closed credit card account with no balance outstanding, the Bank shall mail a certified or Bank check to any Eligible Customer.
- (c) For any closed credit card account with a balance outstanding, the Bank shall provide a credit posted to the account. Where a credit is issued that is greater than the existing balance, the Bank shall mail to the Customer a certified or Bank check in the amount of the excess.
- (d) For any charged-off account, either a credit shall be issued decreasing the charged-off balance by the amount of redress, or the Bank shall issue redress consistent with the requirements for closed credit card accounts set forth in Paragraph 56(b). Where a credit is issued that is greater than the existing charged-off balance, the Bank shall mail to the Customer a certified or Bank check in the amount of the excess. Any Redress Notification Letter, as described in Paragraph 57 below, sent with regard to a charged-off account will notify the Customer of the credit decreasing the charged-off balance as well as any additional money the Customer is receiving.
- (e) With respect to any bankruptcy, estate, accounts in litigation, or account where the account holder is deceased, if the account remains open and the balance is greater than the refund, the Bank shall provide a statement

credit to the account, and otherwise a refund check for the remaining refund shall be sent in accordance with applicable law.

57. With respect to redress paid to Credit Protection Eligible Customers, the Redress Plan shall include: (1) the form of the letter (“Redress Notification Letter”) to be sent notifying Credit Protection Eligible Customers of the redress; and (2) the form of the envelope that will contain the Redress Notification Letter. The letter shall include language explaining the manner in which the amount of redress was calculated; an explanation of the use of a credit and/or check as applicable; and a statement that the provision of refund payment is in accordance with the terms of this Order. The Bank shall not include in any envelope containing a “Redress Notification Letter” any materials other than the approved letters, and when appropriate, redress checks, unless the Bank has obtained written confirmation from the Regional Director that the CFPB does not object to the inclusion of such additional materials.

58. The Redress Plan shall include a description of the following:

- (a) methods used and the time necessary to compile a list of potential Credit Protection Eligible and Identity Protection Eligible Customers;
- (b) methods used to calculate the amount of redress to be paid to each Credit Protection Eligible and Identity Protection Eligible Customers as required herein;
- (c) procedures for issuance and tracking of redress to Credit Protection Eligible and Identity Protection Eligible Customers; and
- (d) procedures for monitoring compliance with the Redress Plan.

59. The Bank shall not attach any conditions to the provision of any credit or check for redress to a Credit Protection and Identity Protection Eligible Customer, including requiring the Credit Protection and Identity Protection Eligible Customer to waive any right.

60. The Bank has made or shall make reasonable attempts to locate Credit Protection and Identity Protection Eligible Customers, including standard address search using the National Change of Address System, whose Redress Notification Letter and/or check is returned for any reason. The Bank has re-mailed, or shall re-mail to corrected addresses, any returned letters and any redress checks, within ninety (90) days of receiving such return. Any unclaimed funds will be disposed of in accordance with the Redress Plan.

61. With respect to any Credit Protection and Identity Protection Eligible Customer's account that receives redress as a credit that decreases the existing balance or charged-off balance, the Bank shall, as permitted by law and in accordance with existing procedures:

- (a) report the updated balance to each credit reporting agency to which the Bank had previously furnished balance information for the account;
- (b) delete the account trade line at each credit reporting agency to which the Bank had previously furnished balance information for the account; or
- (c) in the case of an account sold to an unaffiliated third party, request that such third party owner of the debt report the updated balance to, or delete the account trade line at, each credit reporting agency to which the Bank or the third party owner of the debt had previously furnished balance information for the account.

62. Upon notification that the Regional Director has made a determination of non-objection to the Redress Plan, the Bank shall implement and adhere to the steps,

recommendations, deadlines, and timeframes set forth in the Redress Plan. Any proposed changes, to or deviation from, the approved Redress Plan shall be submitted in writing to the Regional Director for review and non-objection.

#### **Assessment of Redress**

63. Within ninety (90) days from completion of the Redress Plan, the Bank's Internal Audit department shall review and assess compliance with the terms of the Redress Plan (the "Redress Review").

64. The Redress Review shall include an assessment of the Redress Plan and the methodology used to determine the population of Eligible Customers, the amount of redress for each Eligible Customer, the procedures used to issue and track redress payments, the procedures used for reporting and requesting the reporting of updated balances, deleting or requesting the deletion of account trade lines, as applicable, to the credit reporting agencies, and the work of any independent consultants that the Bank has used to assist and review its execution of the Redress Plan.

65. The Redress Review shall be completed and summarized in a written report (the "Redress Review Report"), which shall be completed within sixty (60) days of completion of the Redress Review. Within ten (10) days of its completion, the Redress Review Report shall be submitted to the Regional Director and the Board.

#### **Payment Floor For Credit Protection Eligible Customers**

66. For the purpose of providing restitution as required by this Order, the Bank shall provide restitution as set forth in Paragraph 48(a), in an amount not less than two-hundred fifteen million dollars (\$215,000,000), less any restitution made by the Bank prior to the Effective Date of this Order that complies with the requirements of this Order ("Payment Floor"). If the Bank

claims to have made any restitution prior to the Effective Date of this Order that complies with the requirements of this Order, the Bank shall provide appropriate proof of such restitution to the Regional Director within thirty (30) days of the Effective Date.

67. The Bank shall make all restitution to Credit Protection Eligible Customers required by this Order, regardless of whether the total of such restitution exceeds the Payment Floor.

68. Upon completion of all restitution pursuant to Paragraph 56, if the amount of restitution provided to Credit Protection Eligible Customers is less than two-hundred fifteen million dollars (\$215,000,000), the Bank shall pay the difference in accordance with the processes set forth in Paragraph 56, through a *pro rata* distribution, as appropriate, to the restitution group set forth in Paragraph 48(a)(ii).

**ARTICLE X**  
**CIVIL MONEY PENALTY**

**IT IS FURTHER ORDERED** that:

69. Pursuant to Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law and/or regulations set forth in the Findings and Conclusions, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), the Bank shall pay to the CFPB a civil money penalty of fifteen million dollars (\$15,000,000) with respect to Credit Protection, and five million dollars (\$5,000,000) with respect to Identity Protection, as directed by the CFPB and as set forth herein.

70. Within ten (10) days of the Effective Date, the Bank shall pay the civil money penalty in the form of a wire transfer to the CFPB or to such agent as the CFPB may direct, and in accordance with wiring instructions to be provided by counsel for the CFPB.

71. The civil money penalty paid pursuant to this Order shall be deposited in the Civil Penalty Fund of the CFPB in accordance with Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d), and 12 C.F.R. part 1075.

72. In the event of any default on the Bank's obligations under this Section, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue on any outstanding amounts not paid from the date of default to the date of payment, and shall immediately become due and payable.

73. The Bank shall treat the civil money penalty as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, the Bank shall not:

- (a) Claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any civil money penalty that the Bank pays pursuant to this Order; or
- (b) Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including, but not limited to, payment made pursuant to any insurance policy, with regard to any civil money penalty that the Bank pays pursuant to this Order.

74. To preserve the deterrent effect of the civil money penalty, in any Related Consumer Action, the Bank shall not argue that the Bank is entitled to, nor shall the Bank benefit by, any offset or reduction of any compensatory damages imposed in any Related Consumer Action, by any amount of the civil money penalty paid in this action ("Penalty Offset"). If the court in any Related Consumer Action grants such a Penalty Offset, the Bank shall, within thirty (30) days after entry of a final order granting the Penalty Offset, notify the Regional Director, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment shall not be



deemed an additional civil money penalty and shall not be deemed to change the amount of the civil money penalty imposed in this action.

75. The Bank shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. The Bank shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

**ARTICLE XI**  
**RECORDKEEPING**

**IT IS FURTHER ORDERED** that:

76. Beginning on the Effective Date, for a period of at least two years from the date a Customer is no longer enrolled in an Identity Protection Product or Credit Protection Product program, the Bank must ensure that the following records, to the extent they exist, are retained:

- (a) For each individual Customer and his or her enrollment in that program:
  - (i) Records containing, with respect to each Customer, his or her name, addresses, email addresses, phone numbers, dollar amounts paid, benefits applied for and/or received, quantity of products purchased, description of the product purchased, the date on which the product was purchased, and a copy of the welcome kit mailed to each Customer (if a Customer left the program, include the date the Customer left a program and the reason the Customer left the program);
  - (ii) Records for each Customer reflecting that the Customer expressly agreed to purchase the product, including audio recordings of telephone calls during which a Customer purchased the Add-On Product;

- (iii) For Identity Protection Products, a copy of the Customer's authorization to access his or her credit information from the credit reporting agencies for purposes of activating credit monitoring or retrieval, and the date the Customer was first charged for Identity Protection Products.
- (b) For each Identity Protection Product or Credit Protection Product in general:
  - (i) Records reflecting the expenses and revenues related to the Identity Protection Product or Credit Protection Product;
  - (ii) Records reflecting, on an annual basis, the number of Customers who canceled the Identity Protection Product or Credit Protection Product, and the number of Customers whose Customer accounts were charged off by the Bank;
  - (iii) Records of all Customer complaints that are recorded and tracked by the Bank in accordance with Bank policies and refund requests (whether received directly or indirectly, such as through a Service Provider), and any responses to those complaints or requests; and
  - (iv) Copies of all sales scripts; sales/marketing training materials; advertisements; or other marketing materials, including terms and conditions, fulfillment packages, and welcome kits; and including any such materials used by Service Providers on the Bank's behalf.

77. For a period of six years from the Effective Date, the Bank must retain the following records:

- (a) All documents and records necessary to demonstrate full compliance with each provision of this Order; and
- (b) All records pertaining to the redress, described above in Article IX, including, but not limited to, documentation of the processes and procedures used to determine the Eligible Customers, as that term is defined in Article IX above, the names, contact and account information of the Eligible Customers, any mailing records, and documentation that the appropriate restitution was made.

**ARTICLE XII**  
**DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that:

78. Within thirty (30) days of the Effective Date, the Bank shall deliver a copy of this Order to each member of the Board and the executive officers, as well as to any Service Providers or other agents providing services related to the marketing or administration of Add-On Products as of the Effective Date.

79. For a period of three years from the Effective Date, the Bank shall deliver a copy of this Order to any future board members and executive officers, as well as any Service Providers or other agents providing services related to the marketing or administration of Add-On Products, before they assume their responsibilities.

80. The Bank shall secure a signed and dated statement acknowledging receipt of a copy of this Order with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq., within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Section.

**ARTICLE XIII**  
**NOTICES**

**IT IS FURTHER ORDERED** that:

81. Unless otherwise directed in writing by a CFPB representative, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and shall be sent by overnight courier (not the U.S. Postal Service), as follows:

**To the CFPB:**

Regional Director, CFPB Southeast Region  
Consumer Financial Protection Bureau  
1700 G Street, N.W. Washington D.C. 20552

The subject line shall begin: *In re Bank of America, N.A., et al.* Provided, however, that the Bank may send such reports or notifications by first-class mail, but only if the Bank contemporaneously sends an electronic version of such report or notification to Enforcement\_Compliance@cfpb.gov.

**ARTICLE XIV**  
**EXTENSIONS OF TIME**

**IT IS FURTHER ORDERED** that:

82. Upon a written showing of good cause, the Regional Director may, in his/her discretion, modify any non-material provisions of this Order (e.g., reasonable extensions of time). Any such modification by the Regional Director shall be in writing.

**ARTICLE XV**  
**ADMINISTRATIVE PROVISIONS**

83. Except as set forth in Paragraph 88, the provisions of this Order shall not bar, estop, or otherwise prevent the CFPB, or any other federal or state agency or department, from taking any other action against the Bank.

84. This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 5563(b), and expressly does not form, and may not be construed to form, a contract binding the CFPB or the United States.

85. This Order shall be effective on the date of issuance, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the CFPB or its designated agent.

86. Calculation of time limitations shall run from the Effective Date and shall be based on calendar days, unless otherwise noted.

87. The provisions of this Order shall be binding upon the Bank, its officers, agents, servants, employees, and/or attorneys, and any successors and assigns thereof.

88. This Order constitutes a settlement of the administrative proceeding against the Bank contemplated by the CFPB, based on the conduct described in the Findings and Conclusions set forth in this Order. The CFPB releases and discharges the Bank from all potential liability (other than as set forth in this Order) for a cease and desist or other order or civil money penalty that has or might have been asserted by the CFPB based on the conduct described in the Findings and Conclusions, to the extent such practices occurred prior to the Effective Date and are known to the CFPB as of the Effective Date of the Order. Notwithstanding the foregoing, the practices alleged in this Order may be utilized by the CFPB in future enforcement actions against the Bank 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 shall not preclude or affect any

right of the CFPB to determine and ensure compliance with the terms and provisions of the Order, or to seek penalties for any violations thereof.

89. The provisions of this Order shall be enforceable by the CFPB. Any violation of this Order may result in the imposition by the CFPB of the maximum amount of civil money penalties allowed under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c).

90. The provisions of this Order shall be severable and, should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions shall remain in full force.

91. No promises, representations or warranties other than those set forth in this Order and the accompanying Stipulation have been made by any of the parties. This Order and the accompanying Stipulation supersede all prior communications, discussions, or understandings, if any, of the parties, whether oral or in writing.

92. Nothing in this Order or the accompanying Stipulation shall be construed as allowing the Bank, its Board, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 7<sup>th</sup> day of April, 2014.



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Richard Cordray  
Director  
Consumer Financial Protection Bureau