



## Enforcement Alert: CFPB Orders National Bank to Pay \$3.7 Billion

December 22nd, 2022 | [Lucy Morris](#) and [Robert D. Tilley](#)

### HIGHLIGHTS:

- The CFPB ordered the National Bank to pay \$2 billion in consumer redress and an additional \$1.7 billion in civil penalties for a series of “legal violations across several of its largest product lines” during the period from 2011 through 2022.
- The Bank neither admitted nor denied the allegations, but consented to the entry of an administrative order that imposed a number of prohibitions against future violations of relevant laws and other remedial measures.
- Unlike most CFPB consent orders that have a five-year expiration, the order will terminate within three years.
- In his remarks accompanying the announcement, Director Chopra linked this enforcement action to the Bureau’s recent focus on “repeat offenders.” Describing the Bank as a “corporate recidivist,” Director Chopra described three previous CFPB enforcement actions against the Bank. He gave the Bank’s current leadership credit for recent efforts “to fix longstanding problems,” but he also emphasized that “they are not making rapid progress.”

### CASE SUMMARY:

On December 20, 2022, the CFPB filed an administrative consent order against a National Bank headquartered in Sioux Falls, South Dakota. In the order, the CFPB detailed three ways that the Bank allegedly violated the Consumer Financial Protection Act of 2010 (the “CFPA”). First, the CFPB found that the Bank violated the CFPA’s prohibition on unfair acts and practices through its auto loan servicing practices, including by (1) incorrectly applying payments, (2) assessing incorrect fees and charges to borrowers, (3) repossessing vehicles improperly, and (4) failing to refund GAP fees. The consent order requires that the unused portion of GAP contracts that the National Bank finances are refunded to the borrower, regardless of state law. The consent order credits the Bank for “\$1.3 billion in remediation to more than 11 million borrower accounts to address these auto-loan-servicing issues.”

Second, the CFPB found that the Bank violated the CFPA’s prohibition on unfair acts and practices through certain mortgage servicing practices. For example, the Bank improperly calculated certain formulas related to mortgage modification requests. In addition, the Bank “experienced other errors” that resulted in the Bank assessing borrowers unwarranted charges and fees in a variety of

situations. The Consent Order does not impose any specific conduct changes relating to mortgage servicing practices. The Bureau noted that the Bank made “at least \$195 million” in remediation payments to affected mortgage borrowers as a result of these issues.

Third, the Bureau found that the Bank violated the CFPB’s prohibitions on unfair and deceptive acts and practices in connection with consumer deposit accounts. These issues included inappropriate account freezes based largely on automated fraud detection software (\$160 million), wrongly denying monthly service fee waivers to eligible account holders (\$141 million), and inappropriately assessing overdraft fees (amount unspecified). The Consent Order prohibits the National Bank from charging overdraft fees on debit card purchases and ATM withdrawals in circumstances referred to as Authorized-Positive Overdraft Fees.

#### **RESOURCES:**

You can review all of the relevant court filings and press releases at the [CFPB’s Enforcement page](#).

- [Consent Order](#)
- [CFPB Press Release](#)
- [Prepared Remarks from Director Chopra](#)

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