

RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.



Alert Type

Awareness

Watch

Warning

ACH Transfer Fee Class Action Lawsuit

A class action lawsuit was filed against Bank of America earlier this year on behalf of customers who were assessed fees for automated clearinghouse (ACH) transfers. Bank of America charged \$3 to \$10 for ACH credit transfers depending on the timing of the transfer and the type of account involved. Plaintiffs' attorneys assert that these fees are improper and should be refunded.

Details

As more members take advantage of new service offerings by credit unions, such as ACH transfer services or account-to-account (A2A) / external transfer service, credit unions may charge fees in order to support these services. However, charging for these services could lead to litigation.

Unlike Overdraft / NSF fee lawsuits, the Bank of America case does not allege that the financial institution failed to disclose the fees or how and when the fees are assessed. Instead, it alleges that Bank of America should have disclosed cheaper options for initiating ACH credit transfers (outbound transfers) through online banking. By failing to disclose these options, the complaint alleges that Bank of America was engaged in unfair or deceptive practices.

The complaint alleges that charging fees for ACH credit transfers is deceptive because accountholders could simply instruct payees to take the funds from their Bank of America accounts for no fee. The suit claims accountholders are being deceived into "believing such fees are a fundamental part of moving money via the ACH system".

Although this may be the first in this type of class action lawsuit involving ACH transfer fees; credit unions should take notice and review disclosures, postings on websites promoting this service as well as fee schedules to address this potential risk.

Risk Mitigation Tips

If your credit union charges a fee for ACH transfers, consider these risk mitigation tips:

- Ensure your fee schedule and online banking disclosure clearly state the circumstances when ACH fees are charged.
- Consider disclosing that members may avoid a fee by allowing payees to pull funds (ACH debit) from the member's account.
- Work with your document provider to update disclosures and fee schedules.

Whether or not your credit union charges a fee for ACH transfers, consider adding binding arbitration language with a class action waiver to your member account agreement.

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Risk Category: ACH; Litigation; Deposit Account Fraud; Online/Mobile Banking

States: All

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Risk Prevention Resources

Access CUNA Mutual Group's [Protection Resource Center](#) at cunamutual.com for exclusive risk resources (User ID and Password required).

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