Federal regulators scrutinize BofA for its response to California benefits fraud

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Attorneys

Brian Danitz

Federal regulators are investigating Bank of America for its role in administering government benefits under a California program that was plagued by fraud at the height of the COVID-19 pandemic.

The Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau have been scrutinizing BofA's actions as the state's exclusive provider of prepaid debit cards to unemployment, disability and pandemic-relief beneficiaries, according to sources familiar with the matter.

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Brian Danitz, a partner at the law firm Cotchett, Pitre & McCarthy in San Francisco who filed that lawsuit, alleges that BofA tried to avoid paying out millions of dollars in provisional and permanent credits following fraud complaints. Danitz alleges that BofA purposely denied cardholder claims without justification.

"BofA promises that if there is an unauthorized transaction, not only will they abide by Reg E, but they will make sure that there is zero liability for the cardholder," Danitz said. "When the fraud started to take place during the pandemic, Bank of America summarily denied these claims to avoid abiding by Reg E. This was an intentional, cold-hearted decision based purely on the bottom line."

BofA has denied the allegations and asked for the lawsuits to be dismissed.

BofA has also told California lawmakers that it faced a deluge of up to 40,000 fraud claims a month from late 2020 to early 2021. That's when it began using what it called a "fraud filter" of its own design to weed out criminals.

FEDERAL REGULATORS SCRUTINIZE BOFA FOR ITS RESPONSE TO CALIFORNIA BENEFITS FRAUD

The bank told state lawmakers in December 2020 that it had paid "hundreds of millions of dollars" in provisional credit to fraudsters who had first duped the state into qualifying for benefits, and then sought to double-dip by filing claims to receive provisional credits.

The bank's own fraud detection program demonstrated significant flaws, however, treating many honest individuals as if they were fraudsters.

"The application of these filters will inevitably impact some legitimate claimants," Brian Putler, BofA's director of state government relations for the Western region, said in a letter to state lawmakers.

This attitude did not sit well with U.S. District Judge Vince Chhabria in the class-action litigation.

Last May, the judge took issue with BofA for failing to conduct adequate investigations when cardholders reported unauthorized charges and found BofA often simply froze accounts "based on a faulty screening process."

"The harm being suffered by the class members is irreparable," Chhabria wrote in his ruling. "Continual denial of these benefits will seriously hinder the ability of many class members to feed their families and keep a roof over their heads."

The judge issued an unusual preliminary injunction in June that ultimately was hammered out between the plaintiffs and BofA, with the help of a magistrate judge.

The injunction required BofA to open all of the claims it had denied based on the fraud filter. BofA said it reopened 46,000 claims, ultimately reimbursing 29,000 cardholders. The amount of money that has been returned to cardholders has not been publicly disclosed.

Chhabria said he issued the injunction because of the plaintiffs' "strong likelihood of success on their claims."

BofA also was ordered to expand the hours for fraud and claims initiation calls to 24 hours a day, seven days a week. The judge also ordered that calls be answered within five minutes. BofA's call center staff for the California program ballooned from roughly 300 employees at the start of the pandemic to over 6,000 in late 2020, court documents show.

"Throughout the pandemic as the fraud intensified we committed significant additional resources to help legitimate claimants get their benefits," Halldin said.

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BofA has filed a motion to dismiss the case, along with 13 others, all of which have been consolidated in one multidistrict lawsuit in federal court in San Diego. The motion to dismiss is pending.

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