

ENDNOTES

¹ Section 5(a) of the FTC Act (15 U.S.C. §45(a)) prohibits “unfair or deceptive acts or practices in or affecting commerce” and applies to all persons engaged in commerce, including banks. Under Section 5(a) of the FTC Act, a three-part test is used to determine whether an act or practice is unfair. See *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (March 11, 2004). First, the act or practice must cause or be likely to cause substantial injury to consumers. Second, the injury cannot be reasonably avoided by consumers. Finally, the consumer harm must not be outweighed by countervailing benefits to consumers or competition. Multiple federal financial regulatory agencies have issued public statements addressing the risks of unfair or deceptive acts or practices related to assessing fees on representation transactions, including the OCC, *Overdraft Protection Programs: Risk Management Practices* (April 2023); the CFPB, *Supervisory Highlights Junk Fee Special Edition* (March 2023); and the FDIC, *Consumer Compliance Supervisory Highlights* (March 2022).

² “Whether activities are performed internally or via a third party, banking organizations are required to operate in a safe and sound manner and in compliance with applicable laws and regulations. A banking organization’s use of third parties does not diminish its responsibility to meet these requirements to the same extent as if its activities were performed by the banking organization in-house.” *Interagency Guidance on Third-Party Relationships: Risk Management* (June 7, 2023).

WOULD YOU LIKE TO SUBSCRIBE TO CONSUMER COMPLIANCE OUTLOOK AND OUTLOOK LIVE?

Outlook and Outlook Live are both Federal Reserve System outreach platforms provided at no charge. *Outlook* is a quarterly newsletter focusing on federal consumer compliance topics, while Outlook Live is a webinar series focusing on consumer compliance topics.

To subscribe to *Outlook* and Outlook Live, please visit consumercomplianceoutlook.org. There, you can choose to receive future editions of *Outlook* in electronic or print format. If you provide your email address while subscribing, we will also notify you by email of upcoming Outlook Live webinars.

