

CFPB Bulletin 2016-04

Date: December 14, 2016

Subject: Compliance Bulletin - College Credit Card Agreements

This Compliance Bulletin is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority under Regulation Z and the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act. More particularly, this bulletin:

1. Advises schools to use their own websites to publish college-sponsored credit card agreements to avoid the risk of non-compliance, and notes the high risk of non-compliance with the law for schools that fail to do so; and
2. Provides guidance on which agreements the Bureau recommends schools to disclose at any given time.

Background

A college student credit card is a credit card issued as part of a credit card account under an open-end (not home-secured) consumer credit plan to a college student. These cards may be issued and marketed to students under an agreement between the credit card issuer and an institution of higher education ("college" or "school"). The law requires that the public have access to this type of agreement. This law helps to make students and their families aware of the marketing agreements negotiated between the school and card issuer, including whether the school is paid to encourage students to use a specific credit card.

Pursuant to 15 U.S.C. § 1650(f)(1), the CARD Act requires that schools publicly disclose any agreement made with a card issuer for the purpose of marketing a credit card. Such agreements must be publicly disclosed even if they are primarily marketed to alumni, faculty, or school staff, so long as students may obtain credit cards under those agreements. Under the existing regulations, schools may comply with this requirement by publishing any relevant credit card agreement on their website or by making the agreement available free of charge upon request using reasonable procedures and in a reasonable timeframe. 12 CFR § 1026.57(b); Comment 57(b)-1. Additionally, card issuers have a separate obligation to report the terms and conditions of their agreements with institutions of higher education regarding college student credit cards to the Bureau. The CFPB is required to submit an annual report to Congress about these agreements, and to make the report publicly available. 12 U.S.C. § 1637(r). The CFPB's reports, as well as all such agreements submitted to the CFPB, are at <http://www.consumerfinance.gov/data-research/credit-card-data/college-credit-card-agreement/>.

As noted in the Bureau's December 2015 Student Card report, after reviewing a sample of 25 colleges with the largest number of accounts subject to active credit card partnership agreements, the CFPB identified the following issues:

- **Most institutions of higher education did not make copies of these agreements available on their websites to students and other affected parties:** Of the 25 colleges in the CFPB’s sample, only five disclosed the relevant contract on their website. The other 20 did not do so.
- **With only rare exceptions, schools also failed to provide alternative reasonable means of access to those agreements:** Of the 20 colleges that did not post agreements on their website, only three provided agreements upon request. Even schools that used their website to explain how to obtain the agreement for the most part did not comply with their own stated process.¹

Following this review, the CFPB contacted the sampling of schools that did not provide access to the marketing agreements as of December of 2015, warning them to improve disclosure of school-sponsored credit card agreements.

Posting College Credit Card Agreements Online

The CARD Act and Regulation Z require schools to publicly disclose agreements. To comply, schools can post agreements publicly on their websites or make the agreements available free of charge, upon request by a member of the public, using reasonable procedures and in a reasonable timeframe. If the school does use its own website, then disclosure is straightforward and costless. Any member of the public can access the information free of charge, easily and conveniently and without delay, anytime he or she chooses to do so. This also minimizes any burdens of disclosure upon the school itself, which does not need any kind of manual process to ensure effective disclosure “upon request.” It simply updates its own website as needed.

In contrast, the Bureau’s market monitoring and investigations to date show that schools put themselves at high risk of compliance failure when they do not use website disclosure.² Except in rare cases, schools that did not publish agreements on their websites, but rather instituted other procedures and mechanisms instead, created delays and burdens to access the information. These schools also created a new risk that in actual practice their stated procedures were not being followed consistently, which necessitates training and monitoring to ensure that members of the public are being provided with access, free of charge with reasonable procedures in a reasonable timeframe. In particular, relegating these requests to fulfillment through record-retrieval procedures introduces complexity, potential confusion, and undue delays. Our experience indicates that these outcomes put schools at risk of violating the statutory and regulatory requirements.

Given this clear record, the Bureau advises schools to begin publishing these agreements on their websites without delay if they are not already doing so. Potential liability is readily avoidable in light of the ease and reliability of website disclosure.

¹ See CFPB College Credit Card Agreement Report (December 2015), available at http://files.consumerfinance.gov/f/201512_cfpb_college-credit-card-agreements.pdf, at 31-32

² See *id.* at 31-32.

Treatment of Older Agreements

While the Bureau has not interpreted the applicability of § 1650(f)(1) to agreements that are no longer in effect, the Bureau notes that disclosure of such agreements is consistent with the transparency goals underlying the provision where such agreements continue to be used to market or issue cards to students. To further this aim, the Bureau therefore recommends that schools continue to provide students access to such agreements until the following events have occurred: (1) the stated term of the agreement has expired, if the agreement includes such a term; (2) the credit card issuer is no longer obligated to make any kind of payment to the school under the terms of the agreement; and (3) cards are no longer marketed or issued to students under the terms of the agreement. Schools may continue to disclose agreements even after the above-listed events have occurred, but the Bureau recommends that they ensure that more recent agreements are clearly identified to the public.

Please note that the guidance to schools in the paragraph above is a non-binding general statement of policy. It also has no impact on the scope of the credit card issuer's college student card reporting obligations under the CARD Act.

The Bureau intends to continue actively monitoring the accessibility of college student credit card agreements. An industry participant that suspects it may have engaged in or is engaging in conduct that violates the CARD Act is encouraged to contact the CFPB. Self-reporting and cooperation, consistent with the Bureau's Responsible Business Conduct bulletin, will be taken into account when resolving such matters.³

Regulatory Requirements

This compliance bulletin summarizes existing requirements under the law and findings and conclusions the Bureau has made in the course of exercise of its enforcement authority and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁴ The Bureau has determined that this compliance bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.⁵

³ See CFPB Bulletin 2013-06, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation* (June 25, 2013), available at http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

⁴ 5 U.S.C. §§603(a), 604(a).

⁵ 44 U.S.C. § 3501, *et seq.*