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CFPB Bulletin 2012-06

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Subject: Marketing of Credit Card Add-on Products

A. Background

Credit card issuers market various “add-on” products to card users, including debt protection, identity theft protection, credit score tracking, and other products that are supplementary to the credit provided by the card itself. This bulletin outlines the Consumer Financial Protection Bureau’s (“CFPB” or “the Bureau”) expectation that institutions under its supervision and their service providers offer such products in compliance with Federal consumer financial law. The CFPB will take all necessary steps to ensure that consumers are protected from deceptive sales and marketing practices, including those resulting from failures to adequately disclose important product terms and conditions, or other violations of Federal consumer financial law.¹

CFPB supervisory experience indicates that some credit card issuers have employed deceptive promotional practices when marketing the products, including failing to adequately disclose important product terms and conditions. In addition, some consumers have been enrolled in programs without their affirmative consent, or without realizing that they have been enrolled or are required to pay for the programs. Others have been billed for services that were not performed or activated. Consumer complaints received by the CFPB also indicate that consumers have been misled by the marketing and sales practices associated with credit card add-on products.

¹ Although this bulletin focuses on credit card add-on products, institutions should take the guidance that it provides into consideration when they offer similar products in connection with other forms of credit or deposit services.

B. Applicable Consumer Protections

Institutions that engage in the practices described above risk violating Federal consumer financial laws, including their implementing regulations. Such laws and regulations include, but are not limited to, the following:

1. THE DODD-FRANK ACT PROHIBITION AGAINST DECEPTIVE PRACTICES

Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any deceptive act or practice.² It is also unlawful for “any person to knowingly or recklessly provide substantial assistance to a covered person or service provider” in violation of the prohibitions against deceptive practices.³ As a general matter, a representation, omission, act, or practice is deceptive if:

- The representation, omission, act, or practice misleads or is likely to mislead the consumer;
- The consumer’s interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
- The misleading representation, omission, act, or practice is material.⁴

The CFPB considers the following factors in evaluating the effectiveness of disclosures at preventing consumers from being misled, including where disclosures relate to add-on products:

- Is the statement prominent enough for the consumer to notice?
- Is the information presented in an easy-to-understand format that does not contradict other information in the package and at a time when the consumer’s attention is not distracted elsewhere?

² 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

³ 12 U.S.C. § 5536(a)(3).

⁴ *FTC Policy Statement on Deception* (Oct. 14, 1983), published at 103 F.T.C. 110, 174 (1984). The CFPB is informed by the FTC’s standard for deception. CFPB Supervision and Examination Manual (Oct. 2011) (online at

<http://www.consumerfinance.gov/guidance/supervision/manual/udaap-narrative/>).

- Is the information in a location where consumers can be expected to look or hear?
- Is the information in close proximity to the claim it qualifies?⁵

2. TRUTH IN LENDING ACT/REGULATION Z

Regulation Z implements the Truth in Lending Act (“TILA”). With respect to open end credit, Regulation Z contains rules on account-opening disclosures and periodic statements, and also sets forth special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, and advertising.⁶ Regulation Z also includes rules that apply to credit and charge card application and solicitation disclosures.⁷ Institutions must comply with all requirements of Regulation Z, including when disclosing any fees or charges for debt cancellation and debt suspension plans.⁸

3. EQUAL CREDIT OPPORTUNITY ACT/REGULATION B

Under the Equal Credit Opportunity Act (“ECOA”) and its implementing regulation, Regulation B, creditors may not discriminate against an applicant in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract). ECOA and Regulation B also provide that a creditor may not discriminate based on the fact that all or part of an applicant’s income derives from a public assistance program, or the fact that an applicant has in good faith exercised any right under the Consumer Credit Protection Act.⁹

ECOA and Regulation B apply to credit-card applicants. As such, fair lending concerns may arise based on differential treatment on a prohibited basis in connection with add-on products—including, for example, requiring applicants

⁵ See CFPB Supervision and Examination Manual (Oct. 2011) Examination Manual, (online at <http://www.consumerfinance.gov/guidance/supervision/manual/udaap-narrative/>). These factors track FTC guidance. See “**FTC Advertising Enforcement: Disclosures in Advertising,**” (online at <http://www.ftc.gov/bcp/workshops/disclosures/cases/index.html>).

⁶ See 12 C.F.R. §§ 1026.5 through 1026.16; see also 12 C.F.R. § 1026.4(d).

⁷ See 12 C.F.R. §§ 1026.51-1026.60.

⁸ See, e.g., 12 C.F.R. §§ 1026.6(b) and 1026.60(b).

⁹ See 12 C.F.R. § 1002.4.

based on their race or age to purchase credit card add-on products as a condition of obtaining credit.

C. CFPB Expectations

Institutions supervised by the CFPB should take steps to ensure that they market and sell credit card add-on products in a manner that limits the potential for statutory or regulatory violations and related consumer harm. These steps should include, but are not limited to, ensuring that:

- Marketing materials, including direct mail promotions, telemarketing scripts, internet and print ads, radio recordings, and television commercials, reflect the actual terms and conditions of the product and are not deceptive or misleading to consumers;
- Employee incentive or compensation programs tied to the sale and marketing of add-on products require adherence to institution-specific program guidelines and do not create incentives for employees to provide inaccurate information about the products;
- Scripts and manuals used by the institution's telemarketing and customer service centers:
 - Direct the telemarketers and customer service representatives to accurately state the terms and conditions of the various products, including material limitations on eligibility for benefits;
 - Prohibit enrolling consumers in programs without clear affirmative consent to purchase the add-on product, obtained after the consumer has been informed of the terms and conditions;
 - Provide clear guidance as to the wording and appropriate use of rebuttal language and any limits on the number of times that the telemarketer or customer service representative may attempt to rebut the consumer's request for additional information or to decline the product; and
 - Where applicable, make clear to consumers that the purchase of add-on products is not required as a condition of obtaining credit, unless there is such a requirement.

- To the maximum extent practicable, telemarketers and customer service representatives do not deviate from approved scripts;
- Applicants are not required on a prohibited basis to purchase add-on products as a condition of obtaining credit; and
- Cancellation requests are handled in a manner that is consistent with the product's actual terms and conditions and that does not mislead the consumer.

In addition, institutions that offer credit card add-on products should employ compliance management programs that include:

- Written policies and procedures governing credit card add-on products designed to ensure compliance with prohibitions against deceptive acts and practices, TILA, ECOA, and any other applicable Federal and state consumer financial protection laws and regulations;
- A system of periodic Quality Assurance reviews, the scope of which includes, but is not limited to, reviews of training materials and scripts, as well as real-time monitoring and recording of telemarketing and customer service calls in their entirety, consistent with applicable laws;
- Independent audits of the credit card add-on programs, which address the items listed above and consider whether these programs present elevated risk of harming consumers;
- Oversight of any affiliates or third-party service providers that perform marketing or other functions related to credit card add-on product so that these third-parties are held to the same standard, including audits, quality assurance reviews, training, and compensation structure;
- An appropriate channel for receiving, investigating, and properly resolving consumer complaints related to add-on products; and
- A comprehensive training program for employees involved in the marketing, sale, and operation of credit card add-on products.

The CFPB will continue to closely review the operations of the credit card issuers and service providers that it supervises with respect to add-on products, and to assess whether additional supervisory, enforcement, or other actions may be necessary to ensure that the market for add-on products functions in a fair, transparent, and competitive manner.

For more information about the responsibilities of a supervised credit card issuer that offers credit card add-on products, please refer to the following sections of the CFPB *Supervision and Examination Manual : Compliance Management Review*,¹⁰ *Unfair, Deceptive, and Abusive Acts or Practices*,¹¹ *Truth in Lending Act*,¹² as well as *CFPB Bulletin 2012-03: Service Providers*¹³.

¹⁰ CFPB, *Supervision and Examination Manual* (Oct. 2011) (online at <http://www.consumerfinance.gov/guidance/supervision/manual/compliance-management-review/>).

¹¹ CFPB, *Supervision and Examination Manual* (Oct. 2011) (online at <http://www.consumerfinance.gov/guidance/supervision/manual/udaap-narrative/>).

¹² CFPB, *Supervision and Examination Manual* (Oct. 2011) (online at <http://www.consumerfinance.gov/guidance/supervision/manual/tila-narrative/>).

¹³ CFPB *Bulletin 2012-03* (April 13, 2012) (online at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf).