



July 19, 2012

CFPB PUBLISHES GUIDANCE FOR INSTITUTIONS MARKETING CREDIT CARD ADD-ON PRODUCTS

On July 18, 2012, the Consumer Financial Protection Bureau issued CFPB Bulletin 2012-06 in response to indications that some credit card issuers market add-on products using deceptive promotional practices and consumers have been misled by some of these practices. The Bureau announces in the Bulletin that institutions under its supervision should take steps to ensure that credit card add-on products are marketed and sold in a way that limits the potential for statutory or regulatory violations and related consumer harm.

Among the offending practices associated with credit card add-on products, the Bureau lists (i) inadequate disclosure of product terms, (ii) failure to obtain affirmative consumer consent and (iii) billing consumers for services not provided. Among the federal consumer financial laws and their implementing regulations that institutions engaging in such practices risk violating, the Bureau lists the Dodd-Frank Act (prohibiting deceptive practices), the Truth in Lending Act's Regulation Z (requiring disclosure of fees for debt cancellation and debt suspension plans) and the Equal Credit Opportunity Act and Regulation B (raising fair lending concerns based on differential treatment on a prohibited basis).

In the Bulletin the Bureau sets forth the definition of a deceptive representation, omission, act or practice, from the "FTC Policy Statement on Deception" (Oct. 14, 1983), and the factors the Bureau considers in evaluating the effectiveness of disclosures at preventing consumers from being misled, from the "CFPB Supervision and Examination Manual" (Oct. 2011), which factors track FTC guidance in "FTC Advertising Enforcement: Disclosures in Advertising."

The Bureau also sets forth its expectations for institutions promoting credit card add-on products. Not surprisingly, the Bureau lists among its expectations that —

- Marketing will reflect the actual terms and conditions of the product;
- Employee compensation will not create incentives to provide inaccurate information about products;

- Scripts and manuals used by telemarketing and customer service centers will —
 - Direct representatives to accurately state terms, including material limitations;
 - Prohibit enrollment without affirmative consent;
 - Provide clear guidance on wording, appropriate use and frequency of rebuttals; and
 - Make clear that purchasing a product is not a condition of obtaining credit, where applicable;
- Representatives will not deviate from scripts, to the maximum extent practicable; and
- Cancellation requests will be handled in accordance with the product's terms.

And institutions offering credit card add-on products should employ compliance management programs that include —

- Written policies and procedures;
- Quality assurance reviews;
- Independent audits of credit card add-on programs;
- Oversight of affiliates or third-party service providers for adherence to the same standards;
- An appropriate channel for consumer complaints; and
- Comprehensive employee training.

We note with interest the Bureau's emphasis on the role of oral disclosures and representations by telemarketers and customer service representatives in the promotion of credit card add-on products and the Bureau's stated expectation that institutions will take steps to ensure that such interactive marketing and sale channels are not deceptive or misleading to consumers.

We also note with interest footnote 1 in the Bulletin, which alerts institutions to take this guidance into consideration when offering similar products in connection with other forms of credit or deposit services. □

✧ *Judith Scheiderer and Margaret Stolar*

Darrell L. Dreher
ddreher@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Charles V. Gall
cgall@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com

DREHER TOMKIES SCHEIDERER LLP
2750 Huntington Center
41 S. High Street
Columbus, Ohio 43215
Telephone: (614) 628-8000 Facsimile: (614) 628-1600
WWW.DLTLAW.COM

To see all previously sent ALERTS, visit our website at www.dltlaw.com

To decline future ALERTS, please contact us at ALERTS@DLTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dltlaw.com

Margaret M. Stolar
mstolar@dltlaw.com

Robin R. De Leo
robin@dreher-la.com

Vanessa A. Nelson
vnelson@dltlaw.com

Kathleen L. Caress
kcaress@dltlaw.com