

CFPB BULLETIN 2014-02**Date:** September 3, 2014**Subject:** Marketing of Credit Card Promotional APR Offers

The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing this Bulletin to inform credit card issuers of the risk of engaging in deceptive and/or abusive acts and practices¹ in connection with solicitations that offer a promotional annual percentage rate (APR) on a particular transaction over a defined period of time. These transactions include, but are not limited to, convenience checks, deferred interest/promotional interest rate purchases, and balance transfers.

The Bureau has observed that certain solicitations for these types of offers risk being deceptive if the marketing materials do not clearly and prominently convey that a consumer who accepts such an offer and continues to use the credit card to make purchases will lose the grace period on the new purchases if the consumer does not pay the entire statement balance, including the amount subject to the promotional APR, by the payment due date. In addition, depending on all of the facts and circumstances, a credit card issuer may risk engaging in abusive conduct if it fails to adequately alert consumers to this relationship.

A. Background

Many credit card issuers offer consumers a grace period on new purchases. This means that a consumer who has paid his previous balance in full typically has a period of time after the close of each billing cycle to pay his full balance without incurring interest on the purchases made during the billing cycle. If the consumer fails to pay the entire balance for the billing cycle by the payment due date, the purchase amount that is not paid is subject to interest calculated from the date of purchase (or the first day of the current billing cycle, whichever is later), and the consumer will lose the grace period in the current and future billing cycles for all new purchases until the entire balance is paid in full.²

Credit card issuers may periodically offer consumers the opportunity to transfer a credit card balance or make a purchase that will be subject to a low or zero percent

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibits covered persons and service providers from engaging in deceptive or abusive acts and practices. See 12 U.S.C. 5481, 5531 & 5536(a).

² Regulation Z permits this practice. See 12 CFR 1026.6(b)(2)(v).

APR for a stated period of time. These offers are often marketed as a way to save money by paying off higher-APR cards or to finance a large purchase over a period of time without incurring substantial interest charges. Issuers typically charge a transaction fee for accepting these offers; generally either a percentage of the transaction or a fixed dollar amount, whichever is higher.

CFPB supervisory experience has observed that some card issuers do not adequately convey in their marketing materials that a consumer who accepts such a promotional offer will lose his grace period on new purchases if he does not pay the entire statement balance, including the total amount subject to the promotional APR, by the payment due date. Affected consumers would be those who maintain a grace period on purchases by paying their full statement balance by the payment due date each month, accept the promotional offer, and then continue to make purchases using the credit card. Consumers may incur charges that they do not anticipate - and fail to save the money that they expect - if issuers fail to convey the effect of accepting the offer on the grace period.

B. Risk of deceptive advertising practices

Section 1036 of the Dodd-Frank Act prohibits covered persons or service providers from engaging in deceptive acts or practices.³ As a general matter, a representation, omission, act, or practice is deceptive when:

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

Card issuers often market these promotional offers as a chance for the consumer to save money. Many solicitations emphasize the promotional rate associated with the offer, and that the promotional rate will last for a certain period of time – in some cases, well over a year. Depending on the facts and circumstances, the impression conveyed by these materials may be that the only cost of obtaining the promotional interest rate is the transaction fee set forth in the tabular disclosure required by Regulation Z,⁵ or that the promotional rate is the only rate at which the consumer will incur interest charges.

The Bureau has found that one or more card issuers created and failed to cure such misimpressions. The card issuer or issuers did not adequately convey that

³ 12 USC 5563

⁴ The standard for “deceptive” practices in the Dodd-Frank Act is informed by the standards for the same terms under Section 5 of the FTC Act. See CFPB Exam Manual at UDAAP 5, available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

⁵ See 12 CFR 1026.9(b)(3)(i)(C)

promotional rate offers come with an additional contingent cost that would be important to consumers who maintain a grace period on purchases. Specifically, a consumer who accepts the offer and continues to use the credit card to make new purchases in subsequent billing cycles will not be able to avoid paying interest charges on those new purchases unless he repays the entire balance (both the promotional balance and any new purchase balance) by the statement due date. As a result, the consumer will incur additional interest costs on later purchases until the grace period is restored after full payment. For such a consumer, those interest costs may represent a significant share of the total costs of accepting the offer.

The Bureau has observed that some issuers do not include any information about the loss of the grace period for affected consumers in promotional rate marketing materials. Other issuers may include information regarding the loss of the grace period, but the information is not prominently located in the marketing materials, or uses technical language that fails to clearly explain the full terms, risks, and potential costs of the offer. In the absence of clear language placed in a prominent location, a reasonable consumer's net impression of the solicitations could be that the only cost of obtaining the promotional APR is the disclosed transaction fee, and that the consumer would only incur interest charges at the promotional rate because the only unpaid balance on his credit card would be subject to the promotional APR. This misleading net impression would be presumptively material because it pertains to a central characteristic of the product – its cost.

C. Risk of abusive practices

Credit card issuers should also be aware of the possibility that, depending on all of the facts and circumstances, they may be at risk of engaging in an abusive practice if they fail to provide adequate information alerting consumers that they will be unable to maintain a grace period on new purchases if they do not repay their entire balance, including any promotional balance and any new purchase balance, by the statement due date.

Section 1031 of the Dodd-Frank Act defines an abusive act or practice as one that:

1. Materially interferes with the ability of the consumer to understand a term or condition of a consumer financial product or service; or
2. Takes unreasonable advantage of-
 - a. A consumer's lack of understanding of the material risks, costs, or conditions of the product or service;
 - b. A consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or

- c. A consumer's reasonable reliance on a covered person to act in his or her interests.⁶

Some consumers may not understand certain material costs or conditions of many promotional offers – namely, that the grace period for new purchases is conditioned on full repayment of the promotional balance, and therefore that the consumer may incur additional interest charges on purchases due to the loss of the grace period. Depending on all of the facts and circumstances, an issuer may take unreasonable advantage of such consumers by failing to adequately inform them of these conditions and by exploiting their lack of understanding to impose additional costs. For instance, in some cases an issuer may risk engaging in abusive acts or practices if it fails to make reasonable efforts to alert consumers to the relationship between the grace period on new purchases and the acceptance of a promotional APR offer in the marketing materials for such an offer.

D. Disclosure requirements under Regulation Z

Regulation Z specifically requires the disclosure of information about grace periods at four points in a consumer's relationship with a credit card issuer: on or with solicitations or applications to open a credit card account,⁷ at account opening,⁸ on periodic statements,⁹ and with checks that can be used to access a credit card account.¹⁰ These disclosures generally inform consumers of the length of any grace period and the time at which finance charges will begin to accrue. Regulation Z includes model and required language for making many of these disclosures. In the case of solicitations, applications, account-opening materials, and convenience checks, it requires that certain disclosures be made in the form of a table.¹¹ The tabular disclosures included in offers for convenience checks that carry a promotional rate must also include information about applicable interest rates¹² and the amount of the transaction fee for using the checks, if any fee applies.¹³

Regulation Z does not require marketing materials to include additional disclosures alerting consumers to the effect of accepting a promotional offer on the loss of the grace period on purchases. However, as discussed above, the CFPB is concerned that

⁶ 12 USC 5531

⁷ 12 CFR 1026.60(b)(5)

⁸ 12 CFR 1026.6(b)(2)(v); 12 CFR 1026.6(b)(3)(i)

⁹ 12 CFR 1026.7(b)(8)

¹⁰ 12 CFR 1026.9(b)(3)(i)(D)

¹¹ See 12 CFR 1026.60(a)(2) (solicitations or applications to open a credit card account); 1026.6(b)(1) (account-opening materials); 1026.9(b)(3)(i) (convenience checks). This Bulletin does not alter the information that may or must be included in such tables.

¹² 12 CFR 1026.9(b)(3)(i)(A).

¹³ See 12 CFR 1026.9(b)(3)(i)(C). See also 12 CFR 1026.16 for disclosure requirements that apply to advertisements for open-end plans, including 12 CFR 1026.16(g), which relates to the advertisement of promotional rates and fees.

the marketing materials accompanying some offers may risk being deceptive or abusive in violation of the Dodd-Frank Act, even if Regulation Z is not violated.

E. CFPB expectations

The Bureau expects credit card issuers to incorporate into their compliance management systems adequate measures to prevent violation of Federal consumer financial laws, including the Dodd-Frank Act's prohibitions on unfair, deceptive, or abusive acts or practices.¹⁴ Consequently, credit card issuers are expected to implement internal controls sufficient to ensure that they market promotional APR offers in a manner that limits the risk of statutory or regulatory violations and related consumer harm. These steps should include, but are not limited to, ensuring that:

- All solicitations, applications, account-opening materials, and convenience checks comply with the requirements in Regulation Z;
- All marketing materials clearly, prominently, and accurately describe the material costs, conditions, and limitations associated with the offers; and
- All marketing materials clearly, prominently, and accurately describe the effect of promotional APR offers on the grace period for new purchases.¹⁵

¹⁴ See CFPB Examination Manual V.2 (October 2012) *Compliance Management Review* at p. 1, available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.

¹⁵ See CFPB Examination Manual V.2 (October 2012) *UDAAP* at p. 1 for additional guidance on the CFPB's expectations regarding unfair, deceptive, or abusive marketing practices. http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.