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CFPB Brings First Enforcement Action Involving Deferred Interest Products, Imposes Novel and Burdensome Application Requirements as Remediation

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Yesterday, the Consumer Financial Protection Bureau (“CFPB”) announced a consent order with GE Capital Retail Bank and its subsidiary CareCredit (collectively “CareCredit”) related to what the CFPB alleges were unfair and deceptive enrollment and disclosure practices. Of note, the consent order marks the first public enforcement action by the CFPB against deferred interest products, and offers a glimpse of ways the CFPB may look to regulate such products in the future, including by imposing a potentially burdensome application process.

Overview of Allegations

According to the consent order, CareCredit provides a credit card to consumers for use at dental and medical providers enrolled with CareCredit (“Provider” or “Providers”). The CareCredit Card is either offered to consumers directly by CareCredit or indirectly by staff at each enrolled Provider’s office. When applying for a CareCredit Card, applicants are presented with the choice of either a deferred interest option or a fixed-rate 14.9% payment option.

The consent order alleges that CareCredit engaged in unfair acts and practices by failing to (1) adequately train Provider staff and monitor the sale of its CareCredit Card at the Provider level, and (2) ensure disclosures given to consumers could counteract the “erroneous” information provided orally to consumers.

The CFPB further alleges that CareCredit engaged in deceptive acts and practices because it operated the Provider sales channel for the CareCredit Card and, therefore, was responsible for incorrect statements from Provider staff about “no interest” programs and failures by staff to inform consumers of the 26.99% APR that would apply if the consumer failed to pay the deferred balance in full and on time.

Remediation Requirements of the Consent Order

The consent order requires CareCredit to remediate its contract forms, application procedures and disclosures, and training and promotional practices.

- **Contract Amendments:** CareCredit is directed to amend its contracts with Providers to include “Transparency Principles” (which have not been publicly released) that require Providers to accurately describe the terms of the card to consumers. Contracts also must be amended to prohibit Providers from charging consumers for services in advance, with some exceptions for customer products, orthodontics and services that will be completed within 30 days of the charge. CareCredit also must amend the contracts to account for the new application processes and limitations.

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- **Application Processes:** CareCredit must modify its procedures so that consumers who incur dental or audiology charges in excess of \$1,000 can apply directly to CareCredit through a toll-free number, and the consent order otherwise imposes a three-day waiting period for consumers who wish to apply directly through the Provider for such transactions. The CFPB does not explain why Providers of other services are exempt from these application process requirements, even though consumers may incur more than \$1,000 in charges. Nor does the CFPB address the adverse impact such procedures are likely to have on such point-of-sale transactions. Further, the consent order does not contemplate whether consumers under the age of 21 may apply through the toll-free application process, or whether they would be prevented from doing so based on Regulation Z's requirement for such consumers to submit a written application.
- **Application Disclosures:** CareCredit must disseminate revised application materials, approved by the CFPB, to all Providers. Additionally, Providers are required to maintain the signature page of each contract for six years. Further, CareCredit is prohibited from changing the cover page of the application for three years without first obtaining CFPB approval, unless the change is related to the CareCredit Card APR.
- **Post-Approval Disclosures:** CareCredit is required to make a "Welcome Call" to all CareCredit cardholders within 72 hours of application approval and any same-day charges. The CFPB has provided CareCredit with a script for each Welcome Call informing consumers about:
 - The amount of the initial transaction and how to find additional account details;
 - Notice that any services charged must be performed within 30 days; and
 - If the consumer elected the deferred interest financing option, that an "interest rate" of 26.99% will apply if the original balance is not paid by the end of the promotional period.
- **Periodic Disclosures:** CareCredit also is required to provide "a clear and prominent warning of the promotional period's expiration" in the two billing statements before the end of the deferred interest period. And, CareCredit must use "best efforts" to email the same warning to consumers who opt out of receiving paper billing statements.
- **Training:** CareCredit is required to "enhance" its training for Providers, including by providing a Web-based training program explaining the terms and conditions of the card, applicable elements of the CFPB's consent order and the requirements of the Transparency Principles. All Providers must be retrained within 18 months of the CFPB approving the new training materials.
- **Promotional Practices:** CareCredit is prohibited from providing kickbacks, rebates or other similar volume-based compensation to Providers. CareCredit also may not use paid endorsements to professional associations in consumer-facing marketing.
- **Chargebacks:** In an interesting twist, CareCredit must terminate contracts with any Providers who have a chargeback rate of more than 5% in a one-year period, and must monitor Providers who have fewer than 20 financing transactions yet at least one chargeback in the same annual period.

Separately, the consent order directs CareCredit to set aside \$27.7 million for consumer redress, and set aside a separate \$6.4 million for "the same purpose." While CareCredit does not appear to have to pay a separate civil money penalty to the CFPB, the consent order notes that amounts of the \$27.7 million fund not used for redress will be "used by the Bureau

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in its sole discretion.” Amounts remaining in the \$6.4 million fund will be returned to CareCredit; however, the order requires CareCredit to permit consumers who have previously disputed a charge to appeal CareCredit’s decision on that dispute. CareCredit also must identify those consumers who incurred deferred interest charges for dental or audiology services between January 1, 2009 and December 31, 2012 and inform such consumers they are entitled to file a dispute and obtain redress from the two funds.

Relationship of Consent Order to CARD Act Report

The CFPB said it would study the benefits and risks of deferred interest programs in its October 2013 report on the impacts of the Credit Card Accountability Responsibility and Disclosure Act of 2009 on the credit card marketplace. In the report, the CFPB stated that 43% of subprime cardholders failed to pay their deferred interest balances in full by the required payment date and, therefore, incurred interest on the entire deferred interest balance. Separately, CFPB staff said this failure rate was a concern, despite the fact that the success rate for most card programs has been reported to approach 80%.

The consent order does not appear to be related to payment success rates, but instead to whether consumers were adequately informed of the product terms prior to using their card. That said, deferred interest programs could be significantly burdened if the CFPB applied the terms of the CareCredit consent order to other industry participants. For example, a requirement to directly apply to the card issuer for big-ticket charges at the point of sale could substantially interfere with the check-out process, and the post-approval welcome call could significantly impact the costs of deferred interest programs. As noted above, the consent order also raises questions about how CareCredit should meet its new remediation obligations in a manner that is consistent with the requirements of Regulation Z.

Links to the consent order and related materials may be found below.

- CFPB Orders GE CareCredit to Refund \$34.1 Million for Deceptive Health-Care Credit Card Enrollment: <http://www.consumerfinance.gov/newsroom/cfpb-orders-ge-carecredit-to-refund-34-1-million-for-deceptive-health-care-credit-card-enrollment/>
- Consent Order: http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ge-carecredit.pdf
- Prepared Remarks of CFPB Director Richard Cordray on the CareCredit Enforcement Action Press Call: <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-richard-cordray-director-on-the-carecredit-enforcement-action-press-call/>

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