

# Client Alert.

September 4, 2014

## CFPB Issues Warning to Credit Card Issuers: Promotional APR Offers May Be Deceptive and/or Abusive

By Leonard Chanin, Obrea Poindexter and James Nguyen

On September 3, 2014, the Consumer Financial Protection Bureau (“CFPB”) issued a [bulletin](#) to warn credit card issuers about marketing practices related to credit card promotional APR offers (“Bulletin”). The Bulletin warns credit card issuers that solicitations offering a promotional annual percentage rate (“APR”) on particular transactions—such as convenience checks, deferred interest purchases and balance transfers—may be considered deceptive and/or abusive acts or practices under Sections 1031 and 1036 of the Dodd-Frank Act.

Specifically, the CFPB states that it has “observed” that certain solicitations may be considered deceptive if they do not clearly and prominently convey that a consumer who accepts a promotional APR, and subsequently makes new purchases, will lose a grace period on the new purchases if the consumer does not pay the entire statement balance, including the amount subject to the promotional APR offer, by the payment due date. The Bulletin also warns that credit card issuers who fail to “adequately alert consumers [about] this relationship” may be at risk of engaging in “abusive conduct.”

Along with the Bulletin, the CFPB published a set of “[consumer tips](#)” to explain how grace periods operate. The consumer tips also offer advice to consumers about how to avoid interest charges when accepting a promotional APR offer in situations where a consumer either carries a balance or does not carry a balance on the consumer’s credit card.

Last year, the CFPB cited concerns about grace period disclosures in its “[CARD Act Report](#).” Other concerns cited in the CARD Act Report, such as deferred interest programs and add-on products, subsequently became the focus of [enforcement actions](#) alleging unfair, deceptive or abusive acts or practices (“UDAAP”) against card issuers. The Bulletin highlights the CFPB’s ongoing emphasis on UDAAP issues. It may also signal the agency’s willingness to pursue actions against card issuers who fail to adequately disclose the relationship between promotional APR offers and payments on promotional APR balances, as well as how such payments may impact the availability of a grace period.

### PROMOTIONAL APR OFFERS POSE CERTAIN UDAAP RISKS

#### *Deceptive Marketing Act or Practice*

In the Bulletin, the CFPB states that its supervisory efforts have identified that some card issuers who provide marketing materials to consumers (who accept a promotional APR offer) do not adequately disclose that the consumer will lose any grace period on new purchases if the entire statement balance, which includes the amount subject to the promotional APR in addition to the amount of any new purchases, is not paid in full by the payment due date. Moreover, the CFPB alleges that some marketing materials convey that “the only cost” of obtaining the promotional APR is a transaction fee associated with accepting the offer or “that the promotional rate is the only rate at which the consumer will incur interest charges” for the entire balance.

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The Bulletin, however, identifies that there is “an additional contingent cost” associated with the loss of a grace period (and the subsequent interest charges on new purchases) in the event that a consumer does not pay both the promotional balance and new purchase balance in full by the payment due date. In this regard, the Bulletin states that card issuers who provide solicitations offering a promotional APR, but fail to provide “clear language placed in a prominent location” about the potential cost of losing the grace period, may be at risk of engaging in deceptive advertising practices.

### *Abusive Act or Practice*

Notwithstanding the fact that cardholder agreements and periodic statements specify when accounts are eligible for grace periods, the CFPB also warns that a card issuer may be at risk of engaging in an abusive act or practice if marketing materials do not adequately alert the consumer to the relationship between the promotional APR offer and the possible loss of a grace period. Specifically, the CFPB states that it may be abusive for a card issuer to fail to provide adequate information to alert consumers that they will not be eligible for a grace period on new purchases if they do not repay both the promotional balance and the new purchase balance in full by the payment due date. In such a scenario, the CFPB states that a card issuer may be taking “unreasonable advantage” of a consumer who accepts a promotional APR offer but is not adequately informed by the card issuer that eligibility for a grace period for new purchases is conditioned on paying the entire statement balance in full, including the balance that applies to the promotional APR.

### CFPB EXPECTS CARD ISSUER COMPLIANCE

The Bulletin states that card issuers are expected to update their compliance management systems and implement internal controls to ensure that they market promotional APR offers in a manner that “limits the risk of statutory or regulatory violations and related consumer harm.” As such, card issuers are likely expected to incorporate changes or updates that are consistent with the recommendations in the Bulletin, which provide that:

- All solicitations, applications, account-opening materials and convenience checks comply with requirements in Regulation Z (12 C.F.R. §§ 1026.6 et seq.);
- All marketing materials clearly, prominently and accurately describe the material costs, conditions and limitations associated with promotional APR offers; and
- All marketing materials clearly, prominently and accurately describe the effect of promotional APR offers on the grace period for new purchases.

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