



CFPB's First Enforcement Action Yields Valuable Marketing Guidance for Financial Services Companies

We often suggest that companies that want to comply with the law and avoid regulatory problems should carefully follow what the regulators themselves say and do about enforcing the law. In the case of the Consumer Financial Protection Bureau (CFPB), however, precious little information has been available to help businesses divine the “rules of the road.” The new agency, created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is less than a year old and has no prior enforcement track record. Apart from speeches and preliminary compliance bulletins, the agency has offered limited guidance for businesses that wish to beef up their marketing compliance programs to be consistent with the CFPB's expectations.

The CFPB's announcement on July 18, 2012 that Capital One Bank, without admitting fault, has agreed to pay \$210 million in consumer reimbursement and fines associated with the marketing of “add-on” credit card products, such as payment protection and credit monitoring services, offers valuable guidance for all companies that sell consumer financial products and services. Along with the announcement, the CFPB published a new [Compliance Bulletin](#) establishing clear expectations for all companies operating under the agency's jurisdiction.

While CFPB Bulletin 2012-06 addresses the subject of “Marketing of Credit Card Add-on Products,” smart compliance officers and marketing executives will quickly recognize that the bulletin should be read more broadly, understanding that its guidance applies to the marketing of all consumer financial products and services. Translated in that light, the bulletin provides the following marketing compliance guidelines:

“Institutions supervised by the CFPB should take steps to ensure that they market and sell [consumer financial products or services] 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 or service] and are not deceptive or misleading to consumers;
- Employee incentive or compensation programs tied to the sale and marketing of [consumer financial products or services] require adherence to institution-specific program guidelines and do not create incentives for employees to provide inaccurate information about the products or services;
- 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 or services], including material limitations on eligibility for benefits;
 - Prohibit enrolling consumers in programs without clear affirmative consent to purchase [the product or service], obtained after the consumer has been informed of the terms and conditions;

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- 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 or service]; and
- Where applicable, make clear to consumers that the purchase of [the product or service] is not required as a condition of obtaining other [products or services], 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 [products or services] as a condition of obtaining other [products or services]; 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 [consumer financial products or services] should employ compliance management programs that include:

- Written policies and procedures governing the marketing of [such products or services] designed to ensure compliance with prohibitions against deceptive acts and practices and any 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 product or service marketing 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 [the products or services] 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 [the products or services]; and

- A comprehensive training program for employees involved in the marketing, sale, and operation of [the products or services].”

These new guidelines communicate the CFPB's expansive view of the responsibilities of companies that market financial products and services to consumers. “Let the buyer beware” is no longer acceptable. The CFPB expects that businesses will not only supervise and review their own employees and marketing materials, but also take responsibility for ensuring that consumers are not harmed as a result of marketing activities performed on their behalf by third-party service providers.

In short, the CFPB's message is clear to the financial services companies: “Get control of your marketing or you will pay a high price.”

Loeb & Loeb LLP's Consumer Financial Protection Bureau Task Force

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