CFPB Report and Hearing with DOT Highlight Risks with Rewards Programs

Donnelly L. McDowell

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Yesterday, the CFPB released a report on rewards programs that traces the rise of such programs and warns that it views certain practices as unfair, deceptive, or abusive acts and practices ripe for investigation and enforcement. While the report addresses credit card rewards programs specifically, there are important takeaways for co-branded partners and any company offering a loyalty or rewards program to mitigate risk of enforcement and litigation.

The report was released in conjunction with a hearing co-hosted with the Department of Transportation and featuring remarks and a moderated panel discussion with CFPB Director Rohit Chopra and Secretary of Transportation Pete Buttigieg, along with panelists from consumer groups, policy advocacy organizations, financial institutions, and airlines. Both Director Chopra and Secretary Buttigieg emphasized the importance of transparency in promoting and offering rewards programs and expressed concerns around barriers to competition.

The CFPB report details four categories of common consumer complaints and potential regulatory issues with rewards programs:

- **Vague or hidden conditions**. The report describes complaints from consumers misled by advertising for rewards programs where important limitations were buried in dense terms or not otherwise adequately disclosed. The reports suggests that such practices may constitute deceptive “bait and switch” offers and notes that the Bureau has brought enforcement actions against companies for failure to clearly and conspicuously disclose material conditions in rewards programs upfront. The report notes that such complaints were particularly prevalent for bonus or introductory offers and so-called “churning” prohibitions intended to protect companies from consumers manipulating rewards programs by serially signing up for and canceling accounts.
- **Devaluing earned rewards or changing program benefits**. According to the report, consumers regularly complained about issuers or partners devaluing rewards or otherwise eliminating certain benefits associated with membership or status tiers. In remarks at the hearing, Director Chopra noted that, while the Credit Card Responsibility and Disclosure Act of 2009 (CARD Act) prohibits credit card companies from unilaterally changing certain terms in credit card agreements, issuers and partners regularly change terms to rewards and loyalty programs because the CARD Act does not apply. Director Chopra suggested that such changes are problematic and may violate the law if they deprive consumers of promised benefits, particularly where they occur without notice.
- **Customer service issues and technical glitches**. The report details complaints from

consumers who were unable to redeem rewards due to technical glitches, customer service issues, or so-called “doom loops” where consumers are unable to reach the correct entity or department.

- **Revocation and expiration**. Finally, the report notes complaints from consumers who report having their accounts closed and associated benefits revoked, or consumers who had their rewards expired or benefits withheld notwithstanding a current and active account.

While potentially frustrating for consumers, many practices identified in the report are not necessarily unlawful – at least depending on how they are effectuated. Companies can – and often must – preserve flexibility in how they offer benefits and related redemption terms. Similarly, expiring rewards or conditioning benefits on meeting certain requirements is not inherently unlawful: those limitations just need to be clearly and conspicuously disclosed. As for program changes that may devalue rewards or change advertised benefits, companies should have a considered and deliberate execution plan that includes consumer notice and a reasonable opportunity to use already accrued rewards.

In addition to potential enforcement by the CFPB for programs offered in connection with financial products or services, or DOT for airlines rewards programs, the FTC and state AGs also scrutinize rewards programs and related advertising. Plaintiffs’ attorneys are also active in this space, and have brought class actions under state UDAP laws that may result in significant monetary settlements (see for example AutoZone’s class action settlement in 2019 for $50 million).

Ultimately, while the Bureau’s report questions whether rewards programs are ultimately beneficial for most consumers, it also seems to acknowledge that the growing popularity of these programs reflects that they are here to stay. Companies offering such programs – or partnering with third parties to offer such programs – should take note of the renewed regulatory interest and evaluate their marketing and servicing practices to ensure that any risk is worth the reward.

Kelley Drye Advertising and Marketing Paralegal, James Firsick, assisted with this blog post.