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CFPB Puts Industry on Notice with First Enforcement Action

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WASHINGTON – The Consumer Financial Protection Bureau's first-ever enforcement action Wednesday – hitting Capital One over card marketing practices – carried a pair of messages for the industry as a whole.

First, banks ought not follow Capital One's lead and use similar marketing tactics that could also land them in hot water. But the enforcement action, which included monetary damages totaling $210 million, also indicated the CFPB is not a lone sheriff.

The Office of the Comptroller of the Currency, the credit card bank's primary federal regulator, joined the consumer bureau in hammering Capital One over how its third-party vendors marketed a variety of so-called add-on products – such as payment protection plans – to credit-card users who had low credit scores or low credit limits. Together, the agencies' orders require the bank to pay $150 million to affected customers. The CFPB consent order requires an additional $25 million penalty, and the OCC order requires a separate $35 million penalty.

"We know these deceptive marketing tactics for credit card add-on products are not unique to a single institution," said CFPB Director Richard Cordray, noting that the agency released a compliance bulletin Wednesday that notifies all institutions about prohibited practices. "We expect announcements about other institutions as our ongoing work continues to unfold."

Comptroller of the Currency Thomas Curry, whose agency has struggled with a perception it is too close with the large banks it regulates, added remarks suggesting a more aggressive regulatory approach by the OCC.

"Our actions are intended to ensure not only that the bank operates in a safe and sound manner, but equally important, that it treats each of its customers fairly," Curry told reporters during a joint conference call held by the two agencies. He added, "This announcement demonstrates interagency cooperation at its best."

Wednesday's announcement was the result of a CFPB examination of the tactics that Capital One's call-center vendors used to sell numerous credit-card-related products, including a debt forgiveness plan, to be used in the event of death or disability. Another related product was a payment protection plan, allowing customers to request that the bank cancel up to 12 months of minimum payments.

Other Capital One credit-card add-ons that were deceptively marketed, according to the CFPB, included credit monitoring plans offering services such as identity-theft protection.

Many customers were incorrectly encouraged to think that they had to purchase the products in order to activate their cards while others were deceived into thinking the products were free.

Some customers were enrolled without their consent, said Cordray. Other customers, he added, were led to believe that the products would help build their credit scores, and a final group of customers were enrolled even though they were ineligible for the benefits the plans offered.

"These practices are against the law, and thus have resulted in an enforcement action to protect consumers," Cordray said. "Today's action puts $140 million back in the pockets of two million Capital One customers who were pressured or misled into buying credit card products they didn't understand, didn't want, and in some cases, couldn't even use."

Capital One, which in April announced that it was setting aside $75 million in reserves related to the marketing tactics, neither formally admitted nor denied the government's findings Wednesday.

In a press release, the bank acknowledged that its third-party vendors did not always follow the company's sales scripts and policies, and the bank did not monitor the vendors' activities adequately.

"We are accountable for the actions that vendors take on our behalf," Ryan Schneider, president of Capital One's card business, said in a statement. "These marketing calls were inconsistent with the explicit instructions we provided to agents for how these products should be sold. We apologize to those customers who were impacted, and we are committed to making it right."

A Capital One spokeswoman said that the credit card add-on products are no longer available online, and the bank has no intention of restarting phone sales of payment protection or credit monitoring plans.

Under the consent order that Capital One signed, the bank agreed to stop all marketing of the products in question, and to delay resuming marketing until it submits an acceptable compliance plan to the CFPB.

The $140 million in payments being required by the CFPB, which are expected to go out this year, work out to an average of about $70 for each of the roughly 2 million customers affected, though the amounts will vary.

The $10 million in additional restitution being required by the OCC involves alleged unfair billing practices for credit monitoring products dating back as far as 2002. (The total amount of restitution required in the OCC order officially was $150 million; the restitution required under the CFPB order is satisfied through the OCC's penalty.)

The CFPB's new compliance bulletin notified other financial institutions that the bureau will not tolerate deceptive marketing practices, even those involving third-party vendors.

"Complaints received by the CFPB indicate – and the Bureau's supervisory experience confirms – that other consumers have been misled by the marketing and sales practices associated with credit card add-on products," the bureau stated. "Companies engaging in deceptive practices will be expected to refund fees paid by consumers and, particularly where practices are widespread, pay an appropriate penalty."

It is unclear how many banks might face enforcement actions. But a report last year from the Government Accountability Office, which Cordray referred to in his remarks, found that the nine largest credit card issuers had 24 million customer accounts with debt protection products in 2009. The report said such products often carry high fees and are difficult for consumers to understand.

But if there is a silver lining of Wednesday's enforcement actions for financial institutions, it is the fact that the moves affect only the marketing of credit-card add-ons, said Stacie McGinn, a partner at Simpson Thatcher & Bartlett.

"It's not saying that there's something fundamentally wrong with the product itself, which is a direction they might have chosen to go," said McGinn, a former deputy general counsel at Bank of America.

But Amy Friend, managing director at Promontory Financial Group, said that banks need to pay close attention to the actions that the two agencies took.

"To me, it's a clear indication that they view this as a broader problem, and that others should beware," Friend said.

Friend also noted that the Capital One case does not shed any light on how the CFPB will define "abusive" actions, a key question that emerged from the Dodd-Frank Act. The CFPB and the OCC on Wednesday referred to the marketing tactics used by Capital One's vendors as "deceptive" and "unfair," but not abusive.

Friend added that it is clear that the CFPB, in cracking down on the marketing of credit-card addons, is responding to consumer complaints.

"This is what the CFPB said they were going to do," she said. "They will be data-driven. They will respond to the consumer. And this was a clear example of that."

Maria Aspan contributed to this report.