

Consumer Finance Monitor (Season 7, Episode 32): Credit Card and Other Rewards Programs in the Crosshairs

Speakers: Alan Kaplinsky, Mike Guerrero, Joseph Schuster, and Kristen Larson

Alan Kaplinsky:

Welcome to our award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly podcast show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm. And I'm your host, Alan Kaplinsky, the former practice group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr, and I'll be moderating today's program.

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Today's podcast show is a repurposed webinar that we conducted on June 20th called, Credit Card and Other Rewards Programs in the Crosshairs. So very brief introductions of our speakers. So it's Mike Guerrero, Kristen Larson, and Joseph Schuster. And in just a moment we'll be passing the baton off to Mike.

So here is the agenda for today's program. We're really covering credit card rewards A to Z. It's a very hot topic right now, not only with the CFPB but with some other regulatory agencies and state attorneys general, and there's even been private litigation regarding rewards programs, and it's being attacked from all sides. The programs themselves are being attacked, there're claims being made that they're unfair, deceptive or abusive, and they're being attacked by virtue of a federal bill that, if it passes, will have a huge impact because it will reduce the amount of interchange fees that can be earned by the card issuer bank. And also legislation in Illinois and bills the most notable of which is pending in Pennsylvania, which would have an enormous adverse impact.

So with that introduction, it's my pleasure now to turn the program over to Mike Guerrero.

Mike Guerrero:

Great, thanks Alan. So I'm going to start by touching base on the CFPB's reports on the credit card market. In 2009, Congress passed a Credit Card Accountability Responsibility and Disclosure Act commonly referred to as the CARD Act. One of the CARD Act's requirements was for the Federal Reserve Board to issue a report every two years on the state of the credit card market. This requirement was transferred to the CFPB when the Dodd-Frank Act was enacted. The first report issued by the Bureau was in 2013, there's been six reports since then and the last report was issued last year in 2023. Rewards have been addressed in every single one of these reports, and one of the overarching themes is that these rewards programs are incredibly prevalent.

So dating back to the first report, the CFPB has taken notice of the importance of these programs and they note that it is by far the main reason consumers will apply for a specific card. Not only that, but rewards can impact the consumer's choice at the point of sale as to which card to choose. So rewards are a significant driver in the consumer's activities as it relates to credit cards. The vast majority of credit card spending is done on accounts that have rewards programs. Three quarters of the credit cards issued in 2022 had some form of reward program associated with it.

The Bureau makes it a point to note that this is not evenly dispersed among the consumers using cards. However, about 85% of super-prime accounts are going to have rewards associated with them. Whereas when you move down to subprime, only about half of those accounts have rewards associated with them. And even given that kind of disbursement, more than 90% of all spending on credit cards is done on accounts that have rewards associated with them. In 2022, this spending helped contribute to about \$44 billion in rewards being earned by consumers. And this is an area that continues to increase. So if you compared that to 2019, that's a 60% increase. So rewards are prevalent, consumers like them, they drive consumer behavior and the Bureau is taking note of that.

These rewards programs are also expensive to administer and the Bureau looks to in these reports the cost associated with administering them. So while many of these accounts have an annual fee that helps to go to subsidize the cost of the program, the Bureau also speculates in the reports that these programs could be causing the cost of goods and services to increase because the non-cash payers are being essentially forced to subsidize interchange rates to help pay for these rewards programs. In addition, the report notes that interest rates may be higher, there may be higher margins on the credit card accounts to help to subsidize some of these programs.

At the end of 2022, there were \$33 billion in unearned rewards outstanding or an average of about \$150 per account that's out there. And in line with this, in that same period, about \$35 billion of value was redeemed in credit card rewards. Again, going back to the disbursement of the different credit ranking and credit tiers, only about 6% of that \$35 billion in redemption was by below prime borrowers. And the Bureau, again, takes note of their lesser representation in the market.

Rewards take different forms as well. There could be rewards that take the form of ancillary benefits, but really the focus in the Bureau's report are rewards that take the form of cashback, points or miles. The predominant form is points. That's not to say miles or cashback are not very prevalent, but points tend to be the most predominant form of rewards offered in connection with credit card accounts.

When it comes to redemption, the Bureau notes that cash back is the easiest, most straightforward method for the consumer to understand. Typically, the consumer will choose a number of points or the cashback percentage and then redeem them as statement credits toward outstanding balances on their accounts. The Bureau does criticize points and miles as having a less transparent redemption mechanism. And also these points and miles, the redemption can change based on issuer or program manager discretion.

One metric that the Bureau uses and that the industry tends to use is a cost per point redemption, and this varies significantly. It can vary based on vertical, so redemption vertical, if I'm going to redeem points with an airline versus a hotel versus for gift cards, that one point can have a significantly different value between the redemption avenues. Even within those avenues within different airlines or hotels, individual points can have significantly different values, and this is confusing to consumers, the Bureau notes. And they also identify that there's an entire industry built on directing consumers to the most lucrative redemptions and just to helping them understand how that they can redeem their points.

In addition to these considerations, the Bureau focuses on rewards forfeitures, and this can occur through an account being closed, rewards expiring or sometimes through late payments or defaults on the account. Each quarter, about 4% of all of the accounts outstanding are having some sort of forfeiture associated with them. And when you aggregate the amount of the forfeitures, you're looking at about \$500 million a year. And the Bureau identifies this as being problematic and it points to state laws that are being passed to address this, specifically calling out New York, which Joseph is going to get to later.

A subset of rewards that the Bureau views as particularly important is signup bonuses, and they have their own section in the most recent report. A signup bonus is a lump sum incentive associated with new accounts that a consumer will receive after they get the account and then satisfy a certain minimum spend that occurs within a certain period of time. So \$3,000 of spend within three months, for example, and then you get this bonus. It's important and the Bureau calls it out because about 9% of all of the rewards earned in 2022, that was the \$44 billion number I threw out earlier, is associated with signup bonuses. And what's very important is about one fourth of all cardholders who were eligible for signup bonuses failed to meet the eligibility requirements and did not earn the bonus. So even with 25% of folks not receiving the bonus, it's still making up 10% of the entire reward ecosystem.

This area is the single largest area of complaints related to rewards that are submitted to the CFPB. The Bureau notes in connection with this, that this particularly presents UDAP risk. And while we're talking about UDAP, UDAP is really the

primary avenue through which we see federal regulators attack or criticize or scrutinize these programs through their UDAP authority. So in 2009... Or before even getting into that. When we're talking about UDAP, we're really thinking about marketing earning points, promotions, redemptions forfeiture, any aspect of a rewards program could have a UDAP implication. Most commonly the ones that jump out tend to be on the marketing front, but they can really arise anywhere throughout the life cycle of the rewards program.

So to go through a few examples, in 2009, the FDIC entered into a consent order with a bank that was an issuer of business credit cards, and this credit card offered and advertised a cash back rewards program. And under the program, a percentage of cash back was supposed to be given to the borrowers on purchases. However, when the program was advertised, the borrowers were not told that this percentage of cash back is not going to be attributable to all purchases. They weren't informed that there's a tiered structure, so you get so many points up until you hit a max and then at that max you stop receiving any points. The advertisements included no qualification language, and this consent order was interesting because the FDIC seems to allude to the fact that up to language could have been helpful, but I would just caution that up to language has been criticized particularly by the FTC.

The FTC conducted a survey where they examined consumer behavior and they found that when you use up to advertising, the typical consumer is going to assume that they're going to get the full benefit. So that type of advertisement is going to invite scrutiny, the up to language. But the takeaway from this consent order, without dwelling on that, is really focused on making sure that your customers really understand the terms of the program before they're getting into the program and that any limitations are made clear.

There's also a 2013 OCC consent order with a national bank, and this one related to a checking account reward program, but I think it's equally applicable here. In this consent order, there was a program where the materials and the advertisements did not articulate, again, specific requirements that applied to the program. And this one was a little more nuanced than the other. The materials stated that consumers had to have 10 transactions during a calendar month to qualify.

But in practice, 10 transactions per calendar month had to post to the account in the calendar month and the posting would typically trail the date of the transaction such that not every consumer would be receiving 10 full transactions within the calendar month or 10 posted transactions. So the OCC, in this instance, notes that the bank made representations consumers relied on them and didn't receive the benefit of the bargain when they were taking the actions that they expected would cause them to incur the benefit.

In 2017, and this isn't a consent order, but I think it's noteworthy, the American Bankers Association wrote a letter to then Director, Richard Cordray proposing that guiding principles be established for credit card rewards programs. And those principles fell into three buckets: transparency, promotions and forfeiture. As it related to transparency, the key is that these terms be available to the borrowers or applicants before they go through the process of applying or submitting the application, and that the terms also be available throughout the entire term of the rewards program. They should be easy to access, easy to obtain, and once rewards are in the consumer's account, they should be easy to activate or redeem.

As it relates to promotions, the rewards here should be attainable, so this is particularly relevant for up signup bonuses. The duration and the minimum spend relative to the audience should be reasonable. Subprime card with a \$50,000 spend in two months is more or less illusory and would not comply with these guidelines. The last piece would be forfeiture, and the key here again, is just driving awareness, helping consumers understand when forfeiture will occur. Again, there should also be a reasonableness associated with the instances there.

The last item I'll touch on is just a more recent consent order. So in 2023, the CFPB entered into a consent order with a national bank, again based in UDAP. The portion of the consent order that related to rewards programs had two primary issues. The first related to these online advertisements relating to signup bonuses, the advertisements were delivered online to potential applicants and they read \$200 online rewards bonus offer, 50,000 online bonus points offer, \$500 value.

In practice, these rewards were only made available to folks who submitted applications online, but the Bureau noted that it was very reasonable for these consumers to have the impression that the bonus was only being advertised online, it was an online advertising promotion, and there was no language limiting the application of this to the submission of an online application. So when a consumer submitted an application in a branch or by calling in, they did not get any of the benefit

associated with this. The Bureau's position was that consumers relied on these representations when seeking credit, when submitting the application, and then when making the minimum spend on the card and did not receive the bargain.

The second assertion really is similar, related to targeted ads. So here some customers were selected to receive special signup bonuses, and they were informed of this when they were inside the branch or on a telephone call. The process for enrolling the consumer in these programs, however, was manual. So bank employees had to complete a separate process to make sure that the consumer was enrolled in the program and as is the case commonly with manual processes, that didn't always happen. Again, the Bureau noted that consumers relied on this when they were applying for cards or meeting minimum spend requirements and didn't get the benefit of relying on those representations. So again, UDAP continues to be an area of focus, a key driver is transparency. We'll get to best practices at the end of this.

But with that, I'm going to turn it over to Joseph who's going to address some state law developments and considerations.

Joseph Schuster:

Thank you, Mike. So as I think about rewards programs and when we look at and evaluate rewards programs and their compliance with state and federal law, there's basically five elements that I break rewards programs into. Those are contract, the marketing, the disclosures, the earnings and the redemption, and you have state laws that touch on pretty much each part of this. When you think about your state laws, and we'll get into New York, which is a prime example of, one, you have state laws that specifically apply to rewards programs. That's the New York law that we'll get into here in a moment. Two, you have state laws that govern contracts and a lot of rewards programs are by their nature contracts, and they get into the content of the contract, modifications to that contract, the language that's used, whether there's headers, no headers, and this could be in the credit card rewards agreement or if the reward program's operated by a third party, the contract that is operated by that third party.

The third piece I'll get into are UDAP laws. And then two additional pieces that I'd be remiss not to mention, a number of states have been passing interchange laws, Illinois just enacted one, Pennsylvania is looking at one currently. Then you have a whole category of state laws that can apply just based on the type of rewards are being offered. For example, if there are cash back rewards are being offered, you might need to be worried about achievement laws, things of that nature. As Mike was saying earlier that that 4% turnover rate and rewards that might be forfeit, there might be state laws that implicate those.

But let me start with the laws that are specific to rewards programs. The first one is the New York law that was enacted a couple of years ago. It became effective at the end of last year, and it's essentially grace period law, that requires credit card programs to provide advanced notice of cancellations, closures, terminations or modifications, and then give consumers an opportunity, a 90-day period, during which a person could still use their rewards prior to the modification, prior to the cancellation or termination.

Now, there are a few exceptions within this law. You can have expiration forfeiture or cancellation for misuse of a credit card account or any related reward program. I'd note that misuse is not defined, whether that is rewards abuse, whether that is a default on the credit card program or something else. It's important to look at where a person may forfeit those rewards and whether advanced notice needs to be provided in those instances. Modification is also something that happens quite frequently, whether an airline changes the redemption criteria that it used to take 10,000 miles, now it takes 12,000 miles. Is that a modification? I certainly don't think that a modification would be if you could redeem rewards or miles for a gift card or \$50 gift card and maybe that was to a particular retailer. And now that retailer is no longer available, but a different retailer is still available, they may swap out retailers. I'm not sure that that quite fits within the definition, but they're definitely looking at when you're affecting the earnings or the redemption associated with these types of programs.

So again, as you're looking at your programs, look at what your contract has in terms of when rewards can expire. You certainly would not want to have something in the contract that is in conflict with this New York law. Card holders may not waive this New York law. And then look at how you're doing your earnings and how you're doing your redemption and look at any changes that can happen to those programs and those might require disclosures under this New York law.

One quick note that I would say. This law is certainly applicable to state banks from a preemption context. I think it's also likely applicable to national banks as well. Certainly after the Cantero decision at the US Supreme Court came down. I've heard some entities kind of look at whether they could make a preemption argument under the New York law, I think it'd be an

uphill challenge to do given Cantero and given that state banks are likely to comply and the rewards program is a supplemental piece to the credit that's being offered, which the CFPB gets into in a number of different instances.

Going to move on to a number of state UDAP laws as well. And this again gets to, as I mentioned, the five different areas of rewards programs. I look at the contract, marketing, disclosures, earnings, redemption. When you're thinking about those, the state UDAP laws come into play a lot with the marketing piece. And Mike was talking about that as well in the federal UDAP piece. But if you look at the California law here, that gets into untrue or misleading advertising. And the CFPB will get into this, we're going to talk a little bit about the CFPB report a little bit later on. But what you have in big bold versus what is in smaller print could potentially be problematic. So talked about those disclosures like how difficult the disclosures are, how much they limit the broad claim may be problematic.

Mike was mentioning the up-to. Up-to, as low as, those types of things are claims that the FTC has found issue with. It's also something that when you're talking about rewards programs can potentially be problematic as well. If there are material limitations that you must use a card in a specific way or do things that somebody when they're reading it, they may think that they can do something and receive the rewards points, but there's a trigger that is fundamental to receiving those rewards points. Consider whether it's something that needs to be in that advertisement or whether you can change the way that that program is structured so that you can make sure that it's easily advertised and marketed to people.

Another thing that is discussed a fair amount, and I'm going to skip to the Nevada UDAP law here, are fees that are associated with redeeming rewards. If there are fees that are associated with redeeming rewards, make sure that you're calling those out. Airlines many times have taxes and fees, maybe there's a fee just to book a reward ticket or something of that nature. Do not advertise the reward is free if there's a cost associated with it. Might seem kind of obvious, but it is something that the CFPB, states are looking at here as well.

And here again, are just a number of additional state laws. They're getting into a lot of the same things. I raise all these fees. A lot of states have UDAP laws, a lot of states have contract laws. New Jersey's on there. New Jersey has specific contract requirements of what has to be included in the contract. You can't have terms, you have to call out under New Jersey contract law if any of the terms do not comply with New Jersey law. So there are these state laws. The federal piece is certainly important. But be mindful of all of these laws, especially the laws that are coming down that specifically apply to rewards programs like that New York law as well.

And with that, I'm going to turn it over to Kristen to talk about the CFPB and DOT joint hearing on airline and credit card rewards programs.

Kristen Larson:

Thanks, Joseph. I have two slides to cover here. The first one is going to focus on the hearing and what we heard from the Secretary of Transportation and what we learned during his part of the joint hearing was that he was comparing frequent flyer and credit card rewards to savings and counts, which was a new thing that I'd heard. And he also indicated that consumers choose airlines or credit cards based on the promised rewards. Essentially you pick what card is going to be on top of wallet because you want to get whatever reward from that credit card or from that airline and that the programs need to be fair, transparent and predictable.

He said that there is not any predetermined decisions with respect to the airline reward programs, but I guess we'll see where that goes. Some of the things that he was talking about with the panelists were how do you decide what the point is worth, that value and what leads to change that? Airline panelists were there were some of the smaller airlines, the Allegiant Air, Breeze Airways and Spirit Airlines, but they were commenting that their airlines are transparent and communicate the value of their points and allow points to be redeemed at a smaller value. So you wouldn't have to have enough points to buy the full ticket, but you could contribute towards the cost of the ticket, plus bring other funds like credit card or cash to cover the rest.

And then consumer advocates were concerned that airlines aren't transparent and it's really hard to compare programs because you really don't know what you get for different points or that changes at any time. They also expressed concern about seat capacity and making it difficult to redeem boards, and that gets back to the whole blackout category. The Secretary also indicated that the Department of Transportation was monitoring competition and unfair practices and asked the panel about

the same. Airline panelists expressed concerned about airline airport gates, learned a lot more about the gating practices and how that makes it harder for smaller airlines to compete with the bigger airlines.

The consumer advocates were looking at the markets in which the reward programs were operating and saying that they weren't competitive and consumers do not have real choices, claiming that the root cause of the issue is interchange fees and that the air travel that's dominated by four different major carriers is not competitive. There was one panelist from a smaller bank and one panelist from a smaller credit union and they expressed concerns that the interchange fees are important to strengthen banks and credit card reward programs and 85% of the credit unions' reward cards did carry a revolving balance. And that was kind getting at some of the concerns earlier about people who have revolved balances really don't get the value of the rewards like transactors might get.

Next, I'll turn over to CFPB Director Chopra. He stated four goals for the credit card rewards market protect reward points from massive devaluation, stop bait and switch tactics where you're not giving your promised rewards or you're stripping them away later before they're redeemed, examine deals between card issuers and airlines and promote competition on interest rates. One of the things that he focused on was marketing claims and the ways that consumers can have reasonable assurance that what they earn they can actually redeem and use. Some of the responses to that were that from the consumer advocates were that devaluing rewards that a person already has can be problematic. The credit union panelist said that it'd be helpful if the industry used the same terminology so you can compare apples to apples versus apples and oranges. And that kind of maybe gets back to when The Pew Charitable Trusts came out with the sheets used to compare checking accounts, so something maybe along those lines, and that the transparency is not enough because these reward cards really are pushing consumers into debt.

Chopra agreed with some of the thoughts and had a comment that there's this enormous amount of interest being paid by consumers on credit cards, which we'll see some more tension there as he moves from the late fees to focusing on some of the interest charges as well. He expressed similar concerns about competition as the Secretary had and he summarized it with saying there's really been a shift in reward card markets and interest rates on cards have risen much more than the federal fund rate. So again, you'll see some more pressure there.

And with that, I'm going to turn it back over to Joseph.

Joseph Schuster:

Thank you Kristen. So this dovetails nicely into the CFPB report that came out in May about credit card rewards, and I have on the slide here that the CFPB released the report titled, Credit Card Rewards. The press release, along with it, the title was a bit more alarmist, it was CFPB Report Highlights Consumer Frustrations with Credit Card Rewards Programs. Now, I think it's a great opportunity to identify where the CFPB is going in terms of evaluating rewards programs. It is something that they had previously identified. Chopra has mentioned it before at various industry events that he's been at. That rewards are going to be a focus for the CFPB. This is really an indication of what the CFPB is going to be looking at as they come in and start to examine rewards programs. So as you're getting ready for those types of rewards or for those exams, what you should be looking at.

Now I'd really say with this report, if you look at the table of contents, it very much dovetails into those five areas of rewards programs I was mentioning that I always look at when I'm evaluating them, the contract, the marketing, the disclosures, the earnings and the redemption. And so I'm just going to read a little bit from the table of contents here in a short. So it talks about consumer salience, the complexity, the cost, unexpected promotional conditions, devaluation, redemption problems and revocation. So a lot of these things are the same topics that you're seeing in UDAP and there's the same things that you're seeing in other state laws and they're probably things that you receive as complaints as well.

One of the big things, and Kristen mentioned this a little bit, and this is in the press release, they said credit card companies often use rewards programs as a, quote, bait and switch. By burying terms in vague language or fine print and changing the value of rewards after people sign up and earn them. So a couple of things that you can get out of that. The contract that you have is very important. It needs to be very clear how programs work. The marketing that you're using has to be clear. Any conditions that are on that marketing, if they are material conditions should be very present in the marketing and what you can do.

I'm on planes a lot and I hear pretty much every flight that's enough for two round trip tickets in the continental United States or one round trip ticket from the continental United States to Hawaii. You need to make sure that that's actually true, that when somebody gets that card... There might be somebody who's accumulating points for a period of time and then all of a sudden they can't do that one round trip trip to Hawaii, that's going to be a problem. They're going to say, I heard this on the plane, I signed up for the credit card because you told me I could do this and now I can't do this.

Now this does present difficulty because there has been inflation. Over the past four years costs for flights have gone up. I'd love to be able to lock in the price for a flight, but the amount of money that it costs is more, the amount of points that it may cost is more as well. Figuring out how to properly disclose those things is important. The disclosures that you have along with these. Along fees, we were talking about that a little bit earlier, if on those round trip flights there are fees that are associated with it that needs to be disclosed to consumers as well.

A couple of things that are on this slide as well that are worth noting. The CFPB really paints a picture of credit card rewards as something that are in trouble and that people have a lot of complaints about them. Now the CFPB is collecting complaints on credit card reward programs, so of course they have a lot of rewards. I think the CBA and the ABA did a good job of pointing out that people really liked their credit card rewards programs. You talk to people and people talk about what credit card they want to use for what rewards and how they'll do those different things, but I think the CFPB is really highlighting the importance of clarity and that a lot of creditors used to think that rewards programs were ancillary to the underlying credit. You had the underlying credit card and you needed to follow the Truth in Lending Act, ECOA, whatever the case is. And the CFPB is really taking this opportunity and pointing out that your credit card reward programs are subject to laws as well. They are going to be examined, they are being examined as well, and the CFPB is going to take action against things that it finds problematic.

As we talk about varying terms or how terms are used, another thing that they said that, rewards programs often bury complex terms in the fine print for using the rewards. The CFPB also recently came out with just a couple of weeks ago, June 4th, they came out with a circular on unlawful and unenforceable contract terms and conditions that they talked about in the context of consumer credit contracts. They talked about it, I guess, in consumer contracts more generally. I mentioned to Mike Guerrero earlier that I was going to mention this and Mike goes, "You're not going to say that these rewards programs have unlawful or illegal terms in them." And I said, no, but this is an indication of, what this circular gets to, it's not that programs have terms that are blatantly illegal. This is a list of what the CFPB doesn't like and what they're thinking about from a UDAP perspective with respect to rewards programs.

So I know that a number of entities are looking at their credit programs to see if their credit programs have terms that may be in conflict with some of the things that are in the circular. Looking at your rewards programs as well is something that you should be considering at the same time because the CFPB is going to use the circular against rewards programs in the same way that they are going to be evaluating credit programs against it.

I'm going to move on a little bit to the potential impact of the Credit Card Competition Act of 2023, the Durbin Act. And this is an act that's been coming up fairly often for the past, I don't know, many years, but it seems like things are getting a little bit different. Maybe it's getting a little bit of traction this time around, which is very concerning for a lot of people in the industry because, I have the title of the slide, Potential Impact of the Credit Card Competition Act, be the end of airline rewards programs. It impacts the travel industry. You'd probably see the collapse of some airlines. Airlines do not receive enough revenue, except for maybe one of them, to cover all of their expenses just from selling tickets. They receive a large amount of revenue from the miles that they're selling to co-brand credit card partners. So it could have extreme impact.

So what is the Credit Card Competition Act? It would do similar things but go a lot further than what the Durbin Act did to debit cards, in that it would regulate interchange fees that could be charged as well as require that credit cards carry at least two credit card networks and they would have to be networks other than Visa, Mastercard. So to comply with rule, if you have a credit card that's Visa credit card, it could not have Mastercard in order to comply with this requirement either. It could have American Express or Discover those two are exempt from this rule. This rule only applies to what are known as four party systems. Any party that's a three-party system where the credit card issuer also provides the network would be excluded from this rule. It would also exclude from being able to be part of the network any network that is determined to be a threat to national security, China UnionPay for one would be out in that. The way the rule is worded, I'm not saying the threat to national, it's the way the rule worded. It'd be very restrictive in what could be done and it'd be very limiting.

Like I said, the retailer and lobbyists are doing a great job pushing for this. I think the bank lobbyists are stepping up and fighting back as well. There's been push back by Senator Durbin against some of the vocal opponents of this and they're listed there. We have leadership at Visa, Mastercard, United, American Airlines. There have been a lot of calls from the flight attendants and from pilots, people who would be affected by the impact of this rule as well. And one of the things that's called out is you hear people who are championing this law as saying that it would not affect rewards programs, and that's inconsistent with what we saw with the passage of the original Durbin Amendment, which had a tremendous effect on debit card rewards programs. It basically eliminated debit card rewards programs and they also talked about the savings that would be passed on to consumers as well.

You look at the savings that came from debit cards from the original Durbin Act and it wasn't much. Again, there's a lot of lobbyists that are pushing for this for retailers, I don't think that they're just pushing for so that additional savings can be passed on to consumers. Which by the way, cash is not free either. There are expenses associated with cash to transport, safety, all of those types of things.

I want to get into a little bit, we've touched on it as we've been going through, rewards programs that may be part of a co-branded credit card relationship. So we've all talked a lot about airline programs or hotel programs in this context. When you have those types of programs, you have a credit card and then you have the airline program as well. When you think about rewards programs, you're thinking about whether or not to include those terms as part of your credit card agreement or if they're going to be a separate program. In the case of co-brand relationships, most of the time they're going to be separate because the co-brand partner will be operating their own independent program that operated first, that operated before they had the credit card. The credit card and the earnings from the credit card and the benefits that you receive from that credit card are really supplemental to the program that existed. This creates complications. And it's not something that the credit card entity can just worry about their terms and the airline or the co-brand partner can worry about their terms. Both have to be communicating with this.

And so a number of things here that you should be considering as you're thinking about these in the co-brand context. Marketing. If the co-brand partner is marketing, make sure that the bank partner, the credit card partner, can fulfill that marketing. Similarly, the bank is going to be responsible and their regulators are going to be looking at what marketing is out about the credit card that they're offering and what the credit card can do. So the two parties need to be communicating what's happening with the marketing.

Changes in devaluation of rewards. If the rewards program is being operated by the co-brand partner, the co-brand partner is making a change in the context of their program, they need to be communicating that to the credit card entity. The credit card entity needs to be asking for those types of communications. Similarly, if the credit card program is changing how rewards are earned with respect to the credit card, what categories qualify, whatever the case might be, those need to be communicated to the co-brand partner as well for considerations of the contract piece, the disclosures, the state laws that we're getting into. You may think that just because a co-brand partner is their program, that has no effect on the credit card. Regulars take a different view with respect to that.

Disclosures. Again, there's that recent CFPB guidance on contracts, the disclosures, how they're used, thinking about your marketing, what the marketing has in the body of the claim versus what's in the disclosures, all of that.

Complaints. This is a huge one and this is one that the CFPB focused on in their credit card rewards program report because again, CFPB receives all of these complaints, but making sure that you're looking at those complaints and you are understanding what consumer frustrations are. But also again, in the terms of the co-brand relationship, those complaints need to be shared. So if the credit card provider is not operating the rewards program and the co-branded partner is, complaints that the co-branded partner is receiving need to be shared with the credit card issuer. Now that might not be every single one. There might be able to be an aggregated level of complaints. There are complaints about fees that people are paying for reward redemption or something of that nature. That should be a trigger for the co-brand partner and the credit card issuer to have a discussion about whether their marketing needs to be changed, whether their disclosures need to be changed. When you're looking at the complaints, though, what one party is seeing might affect the other party and it needs to be communicated across entities.

A lot of what we're talking about is coordination between the credit card issuer and the co-brand partner. But another piece of coordination that you need to be thinking about is the customer service experience and how that's going to be coordinated. So

if the consumer is expected... Mike was talking about bonuses that somebody could get for opening a new credit card earlier. If the person doesn't receive that bonus and they call the credit card entity and they say, Hey, I didn't receive my 50,000 point, 50,000 mile bonus, whatever the case is, and the credit card company says, you need to call the airline, you need to call the co-brand partner, and you call them and they say you need to call the bank. That cannot be what happens there. That is going to be a complaint that ends up with the CFPB. The CFPB will take issue with that. The CFPB will take issue with both parties in that relationship.

I guess I'm going to skip down a little bit to that contracting piece. This is something that you want to outline in the contract, who is going to be responsible for that, but also make that experience seamless for the consumer. If you're able to transfer them to the right person, connect them rather than just telling the person that they need to call somebody else. That will help eliminate or reduce complaints in this channel as well. When you're looking at that contracting, outlining those obligations of each party, the channels that you're going to use for communication, both for the consumer and internally so that you can have that communication about complaints, about all these other things that we're talking about. And also what I've found to be very valuable is have an escalation path so when there are issues to make sure that the right people are able to address it very quickly. The more that you include in the contracting about those types of things, the better. We could do a whole webinar on different requirements in a rewards program, co-brand relationships because it's been changing very quickly.

But the last piece I'll touch on, I skipped over briefly is revocation of rewards. So understanding what could lead to revocation of rewards is extremely important. This is a major focus for federal regulators as well as state. So if you are the credit card offer, what you do for revocation of rewards or what a person might do that triggers you from pulling back rewards, you need to be sharing that with your co-brand partner. Likewise, the co-brand partner, if they're going to expire rewards, they're going to do anything with rewards that could affect your credit card customer, you need to be aware of that as well. That could have implications for you as the credit card issuer. Again, like we discussed in New York law, federal law, UDAP law, all of those types of things.

With that, we'll continue on with some best practices, but I'll turn it over to Mike to talk about a few.

Mike Guerrero:

Yeah, thanks Joseph. So I think that last slide we just went over really is a best practices slide too, right? We're touching on a lot of things that need to be considered and need to be addressed. But when I'm thinking about rewards programs, I continue to go back to this position that your product is largely your contract with the consumer and it is essential that that contract be clear and that it articulate how the program works, and that involves going and communicating with your business folks and not having that OCC consent order issue where you write in the contracts you need 10 transactions per calendar month when it's really 10 transactions need to post per calendar month. It's very easy to miss those subtle nuances, but it's very important to really dive in and understand how these provisions or how the language you are drafting is going to be interpreted by the consumer and whether it accurately reflects your business practices.

Again, these terms have to be available as well to the consumer before the consumer gets into the relationship with you. The CFPB knows that this is a driver for the consumer decision making as to which card the consumer wants or which card the consumer's going to use, and these terms need to be easily accessible to the consumer so that the consumer can make an informed decision. Promotions should be attainable. They shouldn't be illusory. The consumer should know what they're getting into when they make that decision.

And going to Joseph's complaint piece just to not divert a ton, but I find it useful when I'm thinking about my product, I look at online forums. People are passionate about these products and how they can earn points and redeem points and issues they're having, and you'll be surprised to see not just where complaints are coming from, the Bureau or submitted through a regulator or the BBB, but really these forums are a good pressure test to see how your program is operating. Last thing I'll add is all of the UDAP considerations that Joseph addressed. Important to focus on that and put yourself in the consumer's shoes. Picking up that document, what would you expect to get as part of this deal?

With that, I think I'll pass it back to you to touch on some of the state laws.

Joseph Schuster:

Sure. So I'm going to try to summarize what I may have gone on in a little bit too much detail about what state laws.

So best practice for state laws. Number one is simple, know what state laws apply or there are state laws that apply to rewards programs, everybody looks at what state law applies to their underlying credit agreement, don't treat your rewards program terms any differently. Know what laws apply, know what laws apply to the marketing, the contract itself, how you're looking at disclosures, all those different types of things.

Also, future-proof your agreements for changes to state laws. These are starting to come, they're starting to be introduced more, how states are looking at interchange fees. When you're looking at your rewards program terms, think about what we're seeing and what's on the horizon with respect to state laws. Also, when you're looking at your co-brand terms, look at what you might be able to do to protect yourself as states start pass laws that limit interchange that can be done in certain circumstances, which may impact what rewards can be offered or where rewards can be offered or the types of transactions, things of that nature.

The biggest thing that I would say those state laws is just make sure that you have a catalog of them. Make sure that if you are choosing not to follow them, that you have that analysis. Whether that analysis is that you do believe that it is preempted, which might be more difficult in the case of rewards programs than it is for the underlying credit contract. Make sure that that is documented. We are seeing the CFPB and other regulators they're starting to look at state laws. I would say not necessarily focusing on strict compliance with state laws, but ensuring that there's at least a process to evaluate and that entities have taken a structured approach with respect to state laws.

With that, I will turn over to Kristen to finish it off with some additional best practices.

Kristen Larson:

And so there's some key terms that you'll see throughout reward programs. That's how the points or miles are evaluated, what you have to do to earn them, how you can redeem them, and how the points can be forfeited. What you want to look to through is, and I think Mike and Joseph talked about this earlier, is you're making sure that your terms are transparent and it's very clear to people what they have to do to earn and redeem rewards and what they can get with the rewards, and you don't want to change and have a bait and switch in the middle of your reward programs that deeply affects people's rewards that they have earned. And you also don't want to have dark patterns where it's really easy to get the rewards, but you make it cumbersome for someone to actually redeem the rewards. We talked a little bit about making sure if there's a fee to, let's say, use an airline that you disclose that there's a fee in addition to your points or miles, and you also don't want to make the reward program so complex that it's very difficult for someone to understand how any of these programs work.

Alan Kaplinsky:

I want to thank our speakers today, Mike Guerrero, Joseph Schuster and Kristen Larson, who did a terrific job in describing what's going on regarding credit card rewards and other types of rewards programs and how they are under attack by federal and state agencies.

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