

# Consumer Financial Protection Circular 2024-07

## Design, marketing, and administration of credit card rewards programs

December 18, 2024

### Question presented

Can credit card issuers violate the law if they or their rewards partners devalue earned rewards or otherwise inhibit consumers from obtaining or redeeming promised rewards?

### Response

Yes. Covered persons that offer, provide, or operate credit card rewards programs, and their service providers, may violate the prohibition against unfair, deceptive, or abusive acts or practices in a variety of circumstances, including instances where some of the conduct in question may be attributable to a third party, such as a merchant partner, and regardless of whether covered persons or service providers are taking actions consistent with rewards program terms. This circular provides some examples where covered persons that offer, provide, or operate credit card rewards programs, and their service providers, may violate the prohibition against unfair, deceptive, and abusive acts or practices, where: (1) the redemption values of rewards that consumers have already earned or purchased are devalued; (2) consumers' receipt of rewards is revoked, canceled, or prevented based on buried or vague conditions, such as criteria disclosed only in fine print or up to the operator's discretion; or (3) consumers have reward points deducted from their balance without receiving the corresponding benefit of the rewards, including due to technical failures when redeeming rewards points on merchant partners' systems.

### Background on Credit Card Rewards Programs

Rewards programs are increasingly used to encourage consumers to apply for and use specific

**Consumer Financial Protection Circulars** are policy statements advising parties with authority to enforce federal consumer financial law.

credit cards.<sup>1</sup> As of 2019, more than 90 percent of general purpose credit card spending occurred on rewards cards, and by the end of 2022, 75 percent of general purpose credit cards were rewards cards.<sup>2</sup> While rewards cards are more common for consumers with higher credit scores, the use of rewards cards is growing fastest among deep subprime, subprime, and near-prime consumers.<sup>3</sup> The amount of money or value that consumers earn and maintain in credit card rewards programs is also large and has increased substantially in recent years. For example, in 2022, consumers earned more than \$40 billion in rewards from major general-purpose credit cards, more than a 50 percent increase from 2019.<sup>4</sup> Consumer rewards balances at the end of 2022 were more than \$33 billion, up 40 percent relative to the fourth quarter of 2019.<sup>5</sup> More consumers are also using rewards to make payments, including for day-to-day purchases and necessary expenses.<sup>6</sup>

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<sup>1</sup> See CFPB, *The Consumer Credit Card Market* (Oct. 2023) (hereinafter “2023 Report”) at 98, [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf). An industry survey found that rewards and cash back programs were the top reason why consumers chose one card over another, as well as the top reason consumers cited for increasing spending on credit cards over the last six months. PYMNTS and Elan, *Credit Card Use During Economic Turbulence* (Dec. 2023), <https://www.pymnts.com/wp-content/uploads/2023/05/PYMNTS-Credit-Card-Use-During-Economic-Turbulence-May-2023.pdf>. See also Arielle Feger, *Cash-back rewards drive consumers to open new credit cards*, *eMarketer* (Mar. 26, 2024), <https://www.emarketer.com/content/cash-back-rewards-drive-consumers-open-new-credit-cards>; Drazen Prelec, *How credit cards activate the reward center of our brains and drive spending*, MIT Sloan (June 9, 2021), <https://mitsloan.mit.edu/experts/how-credit-cards-activate-reward-center-our-brains-and-drive-spending>.

<sup>2</sup> *2023 Report* at 99. One study also found that between 2021 and 2023, while total credit card applications decreased by 2 percent, applications for rewards cards and rewards cards with tiered earnings grew by 5 percent and 8 percent, respectively. Marketa Canayaz, *Consumer Demand for Rich Rewards Rises*, Comscore (July 17, 2024), <https://www.comscore.com/Insights/Blog/Consumer-Demand-for-Rich-Rewards-Rises>.

<sup>3</sup> *2023 Report* at 100. See also Electronic Payments Coalition, *New Study Shows LMI Households Rely on Credit Card Rewards*, Electronic Payments Coalition (Apr. 30, 2024), <https://electronicpaymentscoalition.org/2024/04/30/new-study-data-shows-credit-card-rewards-are-a-lifeline-for-working-class-americans/>. Despite the growth in the use of rewards cards among consumers with lower credit scores, in many cases, these consumers do not benefit from these rewards programs, and research has shown that consumers with higher credit scores generally benefit from credit card rewards programs at the expense of consumers with lower credit scores. See Sumit Agarwal, et al., *Who Pays for Your Rewards? Redistribution in the Credit Card Market* (Dec. 5, 2022), <http://dx.doi.org/10.2139/ssrn.4126641>.

<sup>4</sup> CFPB, *Credit Card Rewards* (May 2024) (hereinafter “*Credit Card Rewards Issue Spotlight*”) at 9, [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-rewards\\_issue-spotlight\\_2024-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-rewards_issue-spotlight_2024-05.pdf).

<sup>5</sup> *2023 Report* at 100. Notably, consumers also forfeit about \$500 million in rewards each year. *Id.* at 102.

<sup>6</sup> See Rimma Kats, *Survey Highlights Growing Consumer Appetite for Paying with Points*, *Payments Journal* (Jan. 3, 2024), <https://www.paymentsjournal.com/survey-highlights-growing-consumer-appetite-for-paying-with-points/> (noting that a majority of consumers favor redeeming their points at grocery stores, online retail outlets, and at gas stations). See also Chase Survey Reveals How Credit Card Rewards Are Enhancing The Holiday Season, Chase Media Center (Nov. 20, 2023), <https://media.chase.com/news/chase-holiday-rewards-survey> (noting that during the

Credit card rewards programs are typically structured around earning rewards “currencies” – most commonly “miles” or other units of value issued by a co-brand partner (such as an airline or hospitality chain) or, alternatively, a credit card issuer’s own “points.”<sup>7</sup> Consumers typically earn miles or points through credit card spending or by directly purchasing them in accordance with pre-determined formulas, or “earn rates.”<sup>8</sup> Many issuers also offer promotional rewards through things like sign-up bonuses and referrals.<sup>9</sup>

Once earned or purchased by consumers, points can be redeemed for rewards like “cash back” (statement credits or direct deposits) or transfers to a co-brand or merchant partner (e.g., miles or merchant-specific gift cards), and also for other types of goods or services, like buying merchandise, donating to charities, applying to purchases at check out, and others.<sup>10</sup> However, both credit card issuers and loyalty programs generally reserve, and often assert a right to, unilaterally change the value of rewards, including at the point of redemption.<sup>11</sup> Reward points or miles valuation changes can sometimes be tied to price changes in the underlying product or service for which the reward is being redeemed (e.g., changes in flight pricing), but program

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holiday season, 33 percent of consumers planned to use rewards to pay for gifts and 25 percent on groceries for holiday meals). *See, e.g.*, Bilt, *How do I redeem points towards a down payment?*, <https://support.biltrewards.com/hc/en-us/articles/10377953401869-How-do-I-redeem-points-towards-a-down-payment>.

<sup>7</sup> *See* Agarwal *supra* note 4, at 8. In 2021, more than one in three general purpose credit cards offered were co-branded. *See* 2023 Report at 25. In addition to rewards currencies and cash back, rewards programs also increasingly offer other affiliated benefits or lifestyle rewards, such as access to airport lounges and priority boarding. *Credit Card Rewards Issue Spotlight* at 8.

<sup>8</sup> *See* CFPB, *The Consumer Credit Card Market* at 212-13 (Dec. 2015), [http://files.consumerfinance.gov/f/201512\\_cfpb\\_report-the-consumer-credit-card-market.pdf](http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf).

<sup>9</sup> *See id.* at 213.

<sup>10</sup> *Credit Card Rewards Issue Spotlight, supra* note 4, at 7. Both quantitative and qualitative evidence indicate consumers spend across months or years to earn sufficient points or miles for infrequent large purchases. *See, e.g., id.* at 15; 2023 Report at 100.

<sup>11</sup> *See, e.g.*, American Express, *Membership Rewards Program Terms and Conditions*, <https://rewards.americanexpress.com/myca/loyalty/us/catalog/tandc> (last accessed Sept. 4, 2024); Citi, *Citi ThankYou Rewards Terms & Conditions*, <https://www.thankyou.com/cms/thankyou/tc.page?pageName=tc> (last accessed Sept. 4, 2024); Chase, *Chase Sapphire Preferred® with Ultimate Rewards® Program Agreement*, <https://www.chase.com/sapphire/rewardsagreement> (last accessed Sept. 4, 2024); Wells Fargo, *Wells Fargo Rewards® Program Terms and Conditions and Addendum*, <https://consumercard.wellsfargorewards.com/#/tnc> (last accessed Sept. 4, 2024); Southwest, *What are the Rapid Rewards Rules and Regulations*, <https://support.southwest.com/helpcenter/s/article/rapid-rewards-rules-and-regulations> (last accessed Sept. 4, 2024) Emily McNutt, *Delta is making it more expensive to earn elite status – here’s how you can bypass the new requirements*, CNN (Aug. 28, 2023), <https://www.cnn.com/cnn-underscored/travel/delta-airlines-status-requirements-update>; Sean Cudahy, *Alaska Airlines raises lounge membership prices, tightens access*, The Points Guy (Nov. 9, 2023), <https://thepointsguy.com/news/alaska-lounge-restrictions/>; Zach Griff, *Why United’s increased status thresholds might not be as bad as they seem*, The Points Guy (Nov. 11, 2022), <https://thepointsguy.com/news/united-premier-changes-not-so-bad/>.

operators also adjust rewards redemption rates distinct from underlying prices, apparently as a means to “preserve” or “maintain” profit margins.<sup>12</sup>

As the market for credit card rewards programs has grown, so too has their complexity.<sup>13</sup> Rewards program operators often assert their ability to unilaterally modify credit card rewards programs, which has caused at least one State to take action to provide consumers with additional protections against such unilateral program modifications.<sup>14</sup> Additionally, the number of consumer complaints that the CFPB receives about credit card rewards programs has also risen dramatically in recent years.<sup>15</sup> Many consumers’ complaints describe how the marketing or initial offering of a rewards program is inconsistent with their actual, later experiences earning and redeeming credit card rewards. For instance, consumers have complained to the CFPB about companies devaluing their rewards relative to what they were marketed, or increasing barriers to redeeming cash or cash-equivalent rewards, such as eliminating the ability for consumers to redeem points for a statement credit.<sup>16</sup>

Consumers have also complained about being denied access to promotional or other rewards because of terms or other requirements hidden in their cardholder or rewards program agreements, including instances of unexpectedly being found ineligible after applying for a credit card<sup>17</sup> or being forced to return a promotional offer because they closed their account within a certain period.<sup>18</sup> For many of these types of complaints, companies and merchant

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<sup>12</sup> See, e.g., United Airlines, *MileagePlus Investor Presentation*, at 23 (June 15, 2020) (MileagePlus program can “adjust[] award pricing based on expected foregone revenue for United”), <https://ir.united.com/static-files/1c0f0c79-23ca-4fd2-80c1-cf975348bab9>; Delta Airlines, *Delta Air Lines SkyMiles Investor Presentation*, at 17 (Sept. 14, 2020) (dynamic pricing model of SkyMiles rewards program allows “flexibility to control costs and preserve margins”), <https://www.sec.gov/Archives/edgar/data/27904/000119312520244688/d27099dex991.htm>; American Airlines, *American Airlines AAdvantage Investor Presentation*, at 22, 35 (Mar. 2021) (AAdvantage “control[s] the ‘exchange rate’ between miles and dollars,” which provides flexibility to “manage costs” and “steer reward demand to optimal flights based on cash displacement risk.”), <https://www.sec.gov/Archives/edgar/data/6201/000000620121000022/aainvestorpresentation.htm>.

<sup>13</sup> See Jamie Lauren Keiles, *The Man Who Turned Credit-Card Points Into an Empire*, *The New York Times* (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/magazine/points-guy-travel-rewards.html> (how “as rewards programs have multiplied, the earned point has grown increasingly complex and fungible”); *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 6.

<sup>14</sup> See *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 11, 20; New York General Business Law § 520-e (2023).

<sup>15</sup> In 2023, there was a more than 70 percent increase in complaints involving credit card rewards over pre-pandemic levels. *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 2.

<sup>16</sup> See, e.g., *id.* at 15, 16.

<sup>17</sup> See, e.g., *id.* at 13.

<sup>18</sup> See, e.g., *id.* at 15.

partners justified revoking, canceling, or preventing consumer access to rewards through requirements and guidelines absent from their marketing materials and only found buried in their cardholder or rewards program agreements.

Consumers have also repeatedly alerted the CFPB about difficulties redeeming their rewards or inexplicably seeing their points disappear. These reported challenges include issues with customer service,<sup>19</sup> technical failures,<sup>20</sup> and dispute resolution,<sup>21</sup> all of which can be further compounded when neither the issuer nor its merchant partner accept responsibility and both refer consumers to the other.<sup>22</sup> Because of these issues, some consumers have seen their rewards disappear when being transferred or applied to a merchant partner, with little recourse to resolve such problems.<sup>23</sup>

## Analysis

The CFPB prohibits any “covered person” or “service provider” from “committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with . . . the offering of a consumer financial product or service.”<sup>24</sup> An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and (2) such injury is not outweighed by countervailing benefits to consumers or to competition.<sup>25</sup> Substantial injury includes monetary harm, and may be based on likely rather than actual injury.<sup>26</sup> In general, an injury is not reasonably avoidable if consumers cannot reasonably anticipate the injury, or when there is no way to avoid the injury even if it is anticipated.<sup>27</sup>

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<sup>19</sup> See, e.g., *id.* at 17.

<sup>20</sup> See, e.g., *id.* at 18.

<sup>21</sup> See, e.g., *id.*

<sup>22</sup> See, e.g., *id.*

<sup>23</sup> See, e.g., *id.* at 19.

<sup>24</sup> 12 U.S.C. § 5531(a); see also 12 U.S.C. § 5536(a)(1)(B).

<sup>25</sup> 12 U.S.C. § 5531(c)(1).

<sup>26</sup> See, e.g., *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 246 (3d Cir. 2015).

<sup>27</sup> See *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158 (9th Cir. 2010) (interpreting whether consumer’s injuries were reasonably avoidable under the FTC Act); *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365-66 (11th Cir. 1988) (same); *Am. Fin. Servs. Ass’n v. FTC*, 767 F.2d 957, 976 (D.C. Cir. 1985) (same).

Under the CFPB, a representation, omission, or practice is deceptive if it is likely to mislead a reasonable consumer and is material.<sup>28</sup> Representations, omissions, or practices are “material” if they “involve[] information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.”<sup>29</sup> In assessing the meaning of a communication, the CFPB looks to its overall, net impression; in other words, the CFPB considers the entire advertisement, transaction, or course of dealing rather than evaluating statements in isolation.<sup>30</sup> A misrepresentation can be “an express or implied statement [that is] contrary to fact.”<sup>31</sup> It may also be deceptive, for example, when a seller partially discloses information about the nature of a product or service, but fails to disclose other material information.<sup>32</sup> Further, “[w]ritten disclosures or fine print may be insufficient to correct a misleading representation.”<sup>33</sup>

Rewards programs are a feature common to many credit cards, and tend to both be prominently marketed by issuers and widely used by consumers.<sup>34</sup> Credit card rewards programs also play a major role in consumer’s choices on which cards to apply for and use for any given transaction.<sup>35</sup>

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<sup>28</sup> See *CFPB v. Gordon*, 819 F.3d 1179, 1192-93 (9th Cir. 2016).

<sup>29</sup> *Novartis Corp. v. FTC*, 223 F.3d 783, 786 (D.C. Cir. 2000) (quoting *In re Cliffdale Assocs., Inc.*, 103 FTC 110, 165 (1984)).

<sup>30</sup> See, e.g., *CFPB v. Aria*, 54 F.4th 1168, 1173 (9th Cir. 2022); *Gordon*, 819 F.3d at 1193; *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 631 (6th Cir. 2014); *Fanning v. FTC*, 821 F.3d 164, 170 (1st Cir. 2016).

<sup>31</sup> FTC, Policy Statement on Deception (Oct. 14, 1983).

<sup>32</sup> See, e.g., *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984) (advertisements referring to “unique formula” were deceptive because they could lead consumers to infer that pain reliever’s formulation was something other than ordinary aspirin); see also *FTC v. Bay Area Business Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005) (“[T]he omission of a material fact, without an affirmative misrepresentation, may give rise to an FTC Act violation.”).

<sup>33</sup> FTC, Policy Statement on Deception (Oct. 14, 1983).

<sup>34</sup> In 2022, rewards card spending was 90 percent of all consumer spending on general purpose credit cards. CFPB, *The Consumer Credit Card Market*, at 99 (Oct. 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf). See also *Background on Credit Card Rewards Programs*, *supra*.

<sup>35</sup> *Id.* at 98. Because credit card rewards programs are offered or provided “in connection” with a consumer financial product or service (the extension of credit to consumers), the “covered persons” or “service providers” who offer, provide, or support such programs (hereinafter “rewards program operators”) must comply with the CFPB, including its prohibitions against unfair, deceptive or abusive acts or practices, as well as other applicable consumer financial protection laws. In the typical case, a credit card issuer providing the rewards program would be a “covered person,” while “service providers” could include the partners or vendors that provide material services on the rewards program in connection with the credit card program, such as co-brand or merchant partners that deliver applicable rewards, or vendors who operate the key infrastructure or platforms for consumers to view, manage, and use their rewards earnings. See 12 U.S.C. §§ 5481(6), 5481(26)(A).



The CFPB is issuing this circular to underscore that the CFPA’s prohibition on unfair or deceptive acts or practices applies to the design, marketing, and administration of credit card rewards programs.<sup>36</sup> Rewards program operators may violate this prohibition in a variety of circumstances regardless of whether they are taking actions consistent with rewards program terms. In particular, rewards program operators risk committing unfair or deceptive acts or practices when (1) rewards that consumers have already earned are devalued; (2) consumers’ receipt of rewards is revoked, cancelled, or prevented based on buried or vague conditions; and (3) rewards points are deducted without consumers receiving the corresponding benefit of the rewards. These examples are illustrative and non-exhaustive.

As described further below, the CFPB emphasizes that covered persons that offer, provide, or operate credit card rewards programs may be liable for an unfair or deceptive act or practice where some of the conduct in question may be attributable to a third party or service provider, such as a merchant partner.<sup>37</sup>

### **Devaluation of Rewards Already Earned or Purchased**

Rewards program operators may commit an unfair or deceptive act or practice when they materially reduce the overall value of rewards that consumers have already earned or purchased. Consumers make decisions on whether to open or use a credit card based on the explicit and implicit representations about the value of card benefits and rewards. For instance, consumers’ reasonable expectations about the value of rewards may be informed by advertisements at account opening, as well as by redemption values of rewards communicated to consumers on or around the time the consumer makes decisions to purchase goods with the card and accrue rewards benefits. Furthermore, fine print disclaimers or contract terms stating that rewards program operators have the right to adjust rewards offerings often will not be sufficient to correct consumers’ net impression about the expected value of rewards.

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<sup>36</sup> While not specifically discussed in this circular, rewards program operators must also comply with the CFPA’s prohibition on abusive acts or practices, 12 U.S.C. § 5531(d), which provides that an act or practice is abusive if it (1) materially interferes with a consumer’s ability to understand a term or condition of a consumer financial product or service or (2) takes unreasonable advantage of the consumer’s (a) lack of understanding of the material risks, costs, or conditions of the product or service; (b) inability to protect their interests in selecting or using a consumer financial product or service; or (c) reasonable reliance on a covered person to act in the consumer’s interests.

<sup>37</sup> See, e.g., *CFPB v. Ocwen Fin. Corp.*, No. 17-80495-CIV, 2019 WL 13203853 at \*30 (S.D. Fla. Sept. 5, 2019) (finding that the CFPB sufficiently alleged CFPA violations regarding add-on products even where add-on vendor was responsible for enrolling borrowers to such add-on products); see also, e.g., *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d at 630 (affirming district court ruling that multiple interrelated corporate and individual defendants were liable under section 5 of FTC Act for deceptive telemarketing scheme); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010) (“a single violation of the [FTC] Act may have more than one perpetrator”) (citing *Bay Area*).

When rewards operators influence consumers’ expectations about the value of rewards in their product or marketing efforts (e.g., to support customer acquisition, retention, or increased purchase volume), but later make decisions to deflate the overall value of accrued rewards, they may have engaged in actions that resemble a traditional “bait-and-switch” scheme.<sup>38</sup> These activities may constitute unfair or deceptive acts or practices under the CFPA.<sup>39</sup>

Enforcers investigating potentially unfair or deceptive acts or practice should consider a variety of different devaluation tactics by rewards program operators. Unfair or deceptive devaluations are easier to detect when the rewards program involves simple, fixed redemption rates with one retailer or merchant partner. But such schemes may be harder to detect where there are numerous potential rewards available or rewards program operators implement more complex program changes. For example, if a rewards program operator uses dynamic pricing for rewards redemptions, enforcers can examine whether the firm is unfairly or deceptively devaluing points over time by considering, for example, whether the dynamic prices in points have increased, in aggregate, relative to dynamic cash prices for the same products or services. Similarly, if a rewards program includes redemption options from multiple participating merchant partners, and the rewards program operator loses a major merchant partner or a major partner materially downgrades the service provided, enforcers can look to whether the rewards program operator is taking reasonable measures to generally maintain the value of rewards, such as by increasing points usable at other merchant partners, allowing customers to cash out points, replacing lost rewards with other rewards, or by other means. Additionally, when two firms merge, resulting in a conversion of one firm’s customers into a new rewards program, enforcers can look at whether the resulting firm took actions to convert customers’ points to the new system without a reduction in points value.<sup>40</sup>

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<sup>38</sup> See 16 C.F.R. 238 *et seq.*, FTC Guides Against Bait Advertising, *Cf. Rossman v. Fleet Card (R.I.) Nat. Ass’n*, 280 F.3d 384, 396-400 (3d Cir. 2002) (credit card issuer soliciting business with no-annual-fee offer while intending to later impose fee constitutes a bait-and-switch scheme).

<sup>39</sup> *Cf.* 24 Fed. Reg. 9755 (Dec. 4, 1959) (noting that FTC enforcement actions with respect to bait-and-switch schemes are brought under the FTC Act’s prohibition on “unfair or deceptive acts or practices”); 32 Fed. Reg. 15540 (Nov. 8, 1967) (similar); *Synopsis of Federal Trade Commission Decisions Concerning “Bait and Switch” Sales Practices* (Sept. 23, 1975) (“The Federal Trade Commission has determined that ‘bait and switch’ practices are unfair or deceptive trade practices and are unlawful under Section 5(a)(1) of Federal Trade Commission Act.”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/NOPO-Bait-and-Switch.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/NOPO-Bait-and-Switch.pdf).

<sup>40</sup> See, e.g., U.S. DOT, USDOT Requires Alaska and Hawaiian Airlines to Preserve Rewards Value, Critical Flight Service as Merger Moves Forward (Sept. 2024), <https://www.transportation.gov/briefing-room/usdot-requires-alaska-and-hawaiian-airlines-preserve-rewards-value-critical-flight> (in connection with regulatory merger approvals, Department of Transportation imposed enforceable “rewards protections against devaluation,” including requiring each earned loyalty program be converted to new program miles at 1:1 ratio and prohibiting “any actions that would devalue HawaiianMiles miles”). The merger approval and requirements were based on “[p]ublic interest criteria [that] include preventing unfair, deceptive, predatory or anticompetitive practices . . .” *Id.*



In any investigation into whether a rewards program operator has engaged in an unfair or deceptive devaluation scheme, enforcers are encouraged to collect and consider accounting or other metrics maintained by program operators or others regarding rewards values. For example, many companies maintain internal figures on the dollar value of outstanding rewards for accounting purposes, including an estimated cost-per-point or weighted average redemption cost.<sup>41</sup> If a firm's cost-per-point or weighted average redemption cost decreases over time, that could suggest a firm has engaged in a bait-and-switch or similar unfair or deceptive act or practice.

The CFPB emphasizes that covered persons that offer, provide, or operate credit card rewards programs may be liable for an unfair or deceptive act or practice even when the material devaluation of rewards could arguably be attributed to the actions of a third party. In other words, if a covered person that offers, provides, or operates a credit card rewards program makes explicit or implicit representations about, and thereby induces consumer expectations regarding, the value of the card benefits or rewards, and the value of those benefits or rewards is subsequently materially reduced by actions that may be attributable to the covered person's merchant partner, the covered person may be liable for an unfair or deceptive act or practice.

### **Hidden conditions**

Rewards program operators also risk committing unfair or deceptive acts or practices when they revoke or cancel rewards, or prevent the award of rewards, based on buried or vague conditions.<sup>42</sup> Rewards programs have become increasingly complex, with lengthy terms and unintuitive restrictions that consumers may not be aware of as they use their credit cards day to day. These lengthy terms may use buried or vague conditions set by rewards program operators that are non-negotiable and may not be consistent with prominent promotional language advertising the rewards that consumers can earn. As noted above, consumer complaints received by the CFPB suggest that, despite descriptions in the fine print of rewards program terms, consumers often do not understand the basis of many rewards forfeitures or denials.

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<sup>41</sup> See, e.g., Capital One Financial Corporation, Annual Report (Form 10-K) (Feb. 24, 2023) (“We use the weighted-average redemption cost during the previous twelve months, adjusted as appropriate for recent changes in redemption costs, . . . to estimate future redemption costs.”). Similarly, informational websites aimed at consumers may also estimate rewards point values. See, e.g., The Points Guy, *TPG launches new data-driven valuations for 6 major US airlines – and updates methodology for credit card currencies* (Sept. 8, 2023), <https://thepointsguy.com/news/new-data-driven-valuations/>.

<sup>42</sup> Additionally, rewards program terms that include unlawful or unenforceable conditions may violate the CFPB's prohibition on deceptive acts or practices. CFPB Circular 2024-03, Unlawful and unenforceable contract terms and conditions (June 2024), <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-03/>. For example, the recently enacted New York statute referenced above may render certain terms in rewards program deceptive with respect to New York residents.

The following are illustrative examples of potentially unfair rewards program practices:

- Revoking or canceling rewards based on vague catch-all language in program terms, such as “gaming” or “abuse.” This can be especially problematic when those terms are also subject to the rewards program operator’s discretion.<sup>43</sup>
- Revoking previously earned rewards based on policies that tie revocation to actions that are not within the consumer’s control and do not constitute fraud or misconduct by the consumer, like an issuer unilaterally closing an account.<sup>44</sup>
- Promotional “sign-up” offers that are denied based on hidden conditions that consumers were not reasonably aware of, such as “churning” conditions that restrict how frequently a consumer can earn sign-up rewards, time periods to earn rewards that are effectively shortened by the hidden and unavoidable period of time needed to receive and activate a card, or promotional offers that are unavailable for applicants through certain channels.

These sorts of dark patterns and fine print will often constitute deceptive representations, omissions, or practices about material concerns, and thus violate the prohibition on deceptive practices.<sup>45</sup> In addition, denying or preventing rewards based on buried or vague terms could cause a substantial monetary injury in the form of lost rewards value and may be unfair.<sup>46</sup> These injuries may not be reasonably avoidable by consumers where conditions are buried or vague, and accordingly hinder consumers’ ability to make a “free and informed choice.”<sup>47</sup> Specifically, consumers cannot reasonably avoid injuries where they are not “adequately informed” of key

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<sup>43</sup> See *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 14.

<sup>44</sup> *Id.* at 20.

<sup>45</sup> See FTC, *Bringing Dark Patterns to Light*, at 7 (Sept. 2022) (“Some dark patterns operate by hiding or obscuring material information from consumers, such as burying key limitations of the product or service in dense Terms of Service documents that consumers don’t see before purchase.”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf). Cf. *FTC v. Amazon.com*, 2024 WL 2723812 at \*1 (W.D. Wash. 2024) (denying motion to dismiss of claims brought under Section 5 of the FTC Act and the Restore Online Shoppers’ Confidence Act based on defendants “trick[ing], coer[cing], and manipulat[ing] consumers . . . by failing to disclose the material terms of the subscription clearly and conspicuously and by failing to obtain consumers’ informed consent before enrolling them”); *FTC v. Publishers Clearing House LLC*, No. 23-CV-4735 (E.D.N.Y. June 6, 2023) (complaint) (alleging defendant “employs dark patterns throughout the consumer’s experience by, among other things . . . placing disclosures in small and light font and in places where a consumer is unlikely to see them”).

<sup>46</sup> CFPB research suggests consumers lose hundreds of millions of dollars in earned rewards each year. *2023 Report*, at 102.

<sup>47</sup> See *FTC v. Neovi*, 604 F.3d at 1158; *Am. Fin. Servs. Ass’n v. FTC*, 767 F.2d at 976.

conditions or presented such information in a confusing way.<sup>48</sup> As noted above, rewards program operators typically promote most prominently the availability of rewards, even more so than other key credit card terms, such as APR or annual fees, while putting conditions around rewards in fine print.<sup>49</sup> Consumers may not understand the restrictive eligibility criteria buried in the fine print where program operators send marketing materials that target rewards promotions to the specific consumers.<sup>50</sup> Similarly, a consumer may be confused by the way a rewards program operator interprets vague catch-all language, such as terms restricting rewards based on impermissible “gaming” or “abuse,” when those interpretations conflict with prominent promotional language or other representations.<sup>51</sup> There are no countervailing benefits that outweigh the injury to consumers or competition of inducing consumers to use credit cards with vague or fine-print conditions that consumers cannot reasonably understand.<sup>52</sup>

### **Inability to Redeem Rewards**

Rewards program operators can also commit unfair or deceptive acts or practices when their customers lose their points because redemption procedures do not function properly. In offering rewards programs, operators make representations to consumers about how rewards can be redeemed, often developing online interfaces for consumers to use to redeem rewards. A rewards program operator is accordingly responsible for administering the rewards program it offers, including coordinating with its merchant partners or vendors, so that consumers can redeem the rewards that they have earned and selected in accordance with the rewards program.<sup>53</sup>

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<sup>48</sup> See, e.g., *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1079 (C.D. Cal. 2012) (consumers could not reasonably avoid injury where sign-up pages did not adequately disclose negative option plan by burying in separate fine print disclosures).

<sup>49</sup> *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 4, 11.

<sup>50</sup> *Id.* at 12-13.

<sup>51</sup> For instance, consumer complaints indicate rewards program operators may interpret as impermissible “gaming” or “churning” consumer card usage behaviors that are otherwise permissible under cardholder agreements and satisfy objective sign-up promotion criteria, such as closing an account after spending the required amount for a promotional rewards bonus. See *id.* at 14.

<sup>52</sup> Notably, as with devaluation, the rewards program operators have already benefitted from the consumer spending on the relevant card by the time they deny the rewards benefits.

<sup>53</sup> Cf. *In re UniRush and Mastercard Int’l Inc.*, No. 2017-CFPB-0010 (Feb. 1, 2017) (consent order) (finding that failures to adequately test and administer prepaid card program conversion were unfair acts or practices), [https://files.consumerfinance.gov/f/documents/201702\\_cfpb\\_UniRush-Mastercard-consent-order.pdf](https://files.consumerfinance.gov/f/documents/201702_cfpb_UniRush-Mastercard-consent-order.pdf). See also *CFPB v. Ocwen Financial Corp.*, No. 17-80495-CIV, 2019 WL 13203853 at \*30 (S.D. Fla. Sept. 5, 2019) (finding that

If systems failures result in consumers losing points when attempting to redeem, it may result in a deceptive practice because consumers would typically have a basis to reasonably believe they were purchasing products or services with their points, which would be false as a result of the failure. It would likely also be unfair because consumers would incur injury as a result of the loss of rewards, with no ability to avoid the harm and no countervailing benefits that outweigh the injury. Even if a rewards program operator ultimately refunds unredeemed points to a consumer, the consumer may be harmed by the consumer's inability to redeem points in the interim,<sup>54</sup> and often consumers end up expending significant time and resources trying to obtain the refund.<sup>55</sup> Consumers cannot reasonably avoid these harms as they do not have control over operators' rewards program administration, including procedures for redeeming points or converting them for use with co-brand or merchant partners.

Again, the CFPB emphasizes that covered persons that offer, provide, or operate credit card rewards programs may commit an unfair or deceptive act or practice when the loss of points due to failures of redemption procedures could arguably be attributed to a merchant partner or service provider. For instance, a covered person may be liable for an unfair or deceptive act or practice when a consumer attempts to transfer rewards points from the online portal of such covered person to the points portal of a merchant partner (e.g., requests a "conversion" of credit card rewards points to points at a travel partner), but technical failures on the merchant partner's system result in the consumer losing the points.

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the CFPB sufficiently alleged CFPA violations regarding add-on products even where add-on vendor was responsible for enrolling borrowers to such add-on products); *see also, e.g., FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d at 630 (affirming district court ruling that multiple interrelated corporate and individual defendants were liable under section 5 of FTC Act for deceptive telemarketing scheme); *FTC v. Neovi*, 604 F.3d at 1155 ("a single violation of the [FTC] Act may have more than one perpetrator") (citing *Bay Area*).

<sup>54</sup> *See Credit Card Rewards Issue Spotlight*, *supra* note 4, at 19 ("the ultimate value to consumers [of converting rewards points to miles or hotel points] depends on a quick and accurate conversion").

<sup>55</sup> *See id.* at 17 (complaints received by CFPB indicate consumers spend time trying to resolve rewards issues through "repeated calls, hours on hold, and thorough documentation of the problem at hand").

## About Consumer Financial Protection Circulars

*Consumer Financial Protection Circulars* are issued to all parties with authority to enforce federal consumer financial law. The Consumer Financial Protection Bureau (CFPB) is the principal federal regulator responsible for administering federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act’s prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other “enumerated consumer laws,” 12 U.S.C. 5481(12). However, these laws are also enforced by state attorneys general and state regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.*, 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with \$10 billion or less in assets). Some federal consumer financial laws are also enforceable by other federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

*Consumer Financial Protection Circulars* are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB’s statutory objective to ensure federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4). *Consumer Financial Protection Circulars* are also intended to provide transparency to partner agencies regarding the CFPB’s intended approach when cooperating in enforcement actions. *See, e.g.*, 12 U.S.C. 5552(b) (consultation with CFPB by state attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

*Consumer Financial Protection Circulars* are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau’s exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce federal consumer financial law. They do not restrict the Bureau’s exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.