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## CONSUMER FINANCIAL PROTECTION BUREAU

### 12 CFR Part X

#### Consumer Financial Protection Circular 2024–02: Deceptive Marketing Practices About the Speed or Cost of Sending a Remittance Transfer

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Consumer financial protection circular.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2024–02, titled, “Deceptive Marketing Practices About the Speed or Cost of Sending a Remittance Transfer.” In this circular, the Bureau responds to the question, “When do remittance transfer providers violate the prohibition on deceptive acts or practices in the Consumer Financial Protection Act (CFPA) in their marketing about the speed and cost of sending a remittance transfer?”

**DATES:** The Bureau released this circular on its website on March 27, 2024.

**ADDRESSES:** Enforcers, and the broader public, can provide feedback and comments to [Circulars@cfpb.gov](mailto:Circulars@cfpb.gov).

**FOR FURTHER INFORMATION CONTACT:** George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

#### SUPPLEMENTARY INFORMATION:

#### Question Presented

When do remittance transfer providers violate the prohibition on deceptive acts or practices in the Consumer Financial Protection Act (CFPA) in their marketing about the speed and cost of sending a remittance transfer?

#### Response

Remittance transfer providers may be liable under the CFPA for deceptive marketing about the speed or cost of sending a remittance transfer. Providers may be liable under the CFPA for deceptive marketing practices regardless of whether the provider is in compliance with the disclosure requirements of the Remittance Rule. For example, among other things, it may be deceptive to:

- Market remittance transfers as being delivered within a certain time frame, when transfers actually take longer to be made available to recipients;
- Market remittance transfers as “no fee” when in fact the provider charges fees;
- Market promotional fees or promotional exchange rates for remittance transfers without sufficiently clarifying when an offer is temporary or limited;
- Market remittance transfers as “free” if they are not in fact free.

#### Background

##### *Remittance Transfer Speed and Costs*

Pursuant to the CFPB’s Remittance Rule,<sup>1</sup> the term “remittance transfer” includes most electronic transfers of funds sent by consumers in the United States to recipients in other countries. Consumers in the United States send hundreds of billions of dollars in remittance transfers to recipients in foreign countries each year.<sup>2</sup> Remittance transfers are often consumer-to-consumer transfers of money by immigrants sending financial support to family and friends in other countries. They also include other types of transfers, such as transfers by consumers in the United States to Americans living temporarily abroad, such as students. Consumers may send remittance transfers regularly as an ongoing source of financial assistance or in other circumstances, such as an occasional or emergency form of support. Remittance transfers also include cross-border consumer-to-business payments for goods or services.

Consumers may choose among a range of bank, credit union, and non-bank

money transmitters when sending a remittance transfer. Non-bank money transmitters have traditionally dominated the market for remittance transfers from the United States. In recent years, new money transmitters have emerged offering digital remittance transfer services. Many established money transmitters have also added digital services, in addition to in-person options for consumers to go to a store or agent to send remittance transfers.<sup>3</sup>

When sending remittance transfers, consumers may consider a number of key factors when deciding among different providers, including the speed of the transfer and its cost as well as convenience, security, reliability, and trust.<sup>4</sup>

The speed of a remittance transfer varies depending on the type of transfer and provider. The World Bank Remittance Prices Worldwide database illustrates that a range of transfer speeds can exist within a given remittance corridor, with some providers, for example, offering delivery in less than an hour, and others offering delivery in three to five days.<sup>5</sup>

Costs can also vary significantly within a remittance corridor. Remittance transfer costs include fees charged by the remittance transfer provider including, if applicable, their agents and third parties. Costs also include any exchange rate costs applied by the provider to the currency conversion and governmental taxes. The exchange rate offered to consumers

<sup>3</sup> See Daivi Rodima-Taylor, *The Uneven Path Toward Cheaper Digital Remittances*, Migration Information Source (June 22, 2023), <https://www.migrationpolicy.org/article/cheaper-digital-remittances>; Daniel Webber, *Remittances’ Shift to Digital: Driving Change in an Industry Split Between Yesterday and Tomorrow*, Forbes (Mar. 21, 2023), <https://www.forbes.com/sites/danielwebber/2023/03/21/remittances-shift-to-digital-driving-change-in-an-industry-split-between-yesterday-and-tomorrow/?sh=77f07495341>.

<sup>4</sup> See 2012 Final Rule, 77 FR 6194, 6199 (Feb. 7, 2012). See also Annette LoVoi, *Sending Money: The Path Forward*, Appleseed, at 12 (May 2016), <http://www.ctappleseed.org/wp-content/uploads/2016/04/Immigrant-Finances-Final-Appleseed-Report-on-Remittance-Use-Sending-Money-Home-5.26.16.pdf>; ICF Macro, *Summary of Findings: Design and Testing of Remittance Disclosures*, Report to the Board of Governors of the Federal Reserve System, at 2–4 (Apr. 20, 2011), [https://www.federalreserve.gov/econresdata/bcreg20110512\\_ICF\\_Report\\_Remittance\\_Disclosures\\_FINAL.pdf](https://www.federalreserve.gov/econresdata/bcreg20110512_ICF_Report_Remittance_Disclosures_FINAL.pdf).

<sup>5</sup> See The World Bank, *Remittance Prices Worldwide: Making Markets More Transparent*, <https://remittanceprices.worldbank.org/>. The database also reflects that a range of costs exist for sending a remittance transfer in a given corridor.

<sup>1</sup> Reg. E, 12 CFR part 1005 *et seq.*

<sup>2</sup> CFPB, *Remittance Rule Assessment Report*, at 7 (Revised Apr. 24, 2019), [https://files.consumerfinance.gov/f/documents/bcfr\\_remittance-rule-assessment\\_report\\_corrected\\_2019-03.pdf](https://files.consumerfinance.gov/f/documents/bcfr_remittance-rule-assessment_report_corrected_2019-03.pdf).

often reflects a spread—meaning, a percentage difference between the retail exchange rate offered to the consumer and some wholesale exchange rate.<sup>6</sup> Remittance transfer providers utilize different pricing strategies when determining the fees and exchange rate they charge to consumers for remittance transfers.

#### *Transparency Concerns Around Remittance Transfer Speed and Costs*

Prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act), Federal consumer protection laws generally did not apply to remittances, and remittance transfer providers were not consistently required to disclose applicable fees, exchange rates, transfer speeds, and the amount to be received in a transaction. Consumers thus did not always know how much money would be received on the other end and were not able to easily comparison shop among providers.

With the Dodd-Frank Act's amendments to the Electronic Fund Transfer Act and the promulgation of the Remittance Rule, remittance transfer providers are now generally required to disclose certain information to consumers before the consumer pays for a transfer and also when payment is made.<sup>7</sup> Before the consumer pays for a transfer, the information a remittance transfer provider must disclose includes (but is not limited to): as applicable, the amount that will be transferred to the designated recipient in the currency in which the remittance transfer is funded; any fees imposed and any taxes collected on the remittance transfer; the total amount of the transaction, which is the sum of the amount that will be transferred and any fees imposed and any taxes collected, in the funding currency; the exchange rate used by the provider for the remittance transfer; any covered third-party fees; and the amount that will be received by the designated recipient in the currency in which the funds will be received. The receipt that consumers generally receive when payment is made must contain the same information. In addition, the receipt must disclose the date in the foreign country on which funds will be available to the designated recipient.

<sup>6</sup> See 2012 Final Rule, 77 FR 6194 at 6196 (discussing the exchange rate as a component of cost). See also CFPB, *Report on Remittance Transfers*, at 12–13 (July 20, 2011), [https://www.consumerfinance.gov/wp-content/uploads/2011/07/Report\\_20110720\\_RemittanceTransfers.pdf](https://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110720_RemittanceTransfers.pdf) (discussing the “well-recognized” concept of exchange rate spread in the remittance transfer industry).

<sup>7</sup> Reg. E, 12 CFR 1005.31.

Compliance with the Remittance Rule disclosure requirements does not obviate the obligation to refrain from misleading marketing practices. In particular, remittance transfer providers must ensure their marketing practices do not violate the prohibition of unfair, deceptive, or abusive acts or practices in the CFPA.<sup>8</sup>

The CFPB has identified problems with transparency and accuracy in marketing practices about the speed of a remittance transfer in its supervision of remittance transfer providers and enforcement of the CFPA's prohibition against deceptive acts or practices. In the CFPB's Spring 2022 Supervisory Highlights, the CFPB discussed examiners' findings that remittance transfer providers made false and misleading representations about the speed of remittance transfers.<sup>9</sup> In October 2023, the CFPB issued a consent order against Chime Inc., d/b/a Sendwave, finding that the remittance transfer provider made misleading statements in advertisements about the speed and cost of its services, in violation of the CFPA's prohibition on deceptive acts or practices.<sup>10</sup> This provider claimed in social media marketing that remittance transfers would be delivered “instantly,” in “30 seconds” or “within seconds,” and would incur “no fees,” when in fact transfers often took much longer, and the provider charged a fee.<sup>11</sup>

In addition, consumers have reported, and the CFPB has observed, problems with price transparency in the marketing practices of remittance transfer providers, resulting in

<sup>8</sup> 12 U.S.C. 5531. The CFPB has taken public action against multiple remittance transfer providers to enforce various provisions of the CFPA and the Remittance Rule. See *Chime, Inc. d/b/a Sendwave*, No. 2023–CFPB–0012 (CFPB filed Oct. 17, 2023); *Servicio UniTeller, Inc.*, No. 2022–CFPB–0012 (CFPB filed Dec. 22, 2022); *Choice Money Transfer, Inc. d/b/a Small World Money Transfer*, No. 2022–CFPB–0009 (CFPB filed Oct. 4, 2022); *CFPB v. MoneyGram International, Inc.*, No. 22–cv–3256 (S.D.N.Y. filed Apr. 21, 2022) (pending); *Envios de Valores la Nacional Corp.*, No. 2020–BCFP–0025 (CFPB filed Dec. 21, 2020); *Sigue Corporation, et al.*, No. 2020–BCFP–0011 (CFPB filed Aug. 31, 2020); *Trans-Fast Remittance LLC, also doing business as New York Bay Remittance*, No. 2020–BCFP–0010 (CFPB filed Aug. 31, 2020); *Maxitransfers Corp.*, No. 2019–BCFP–0008 (CFPB filed Aug. 27, 2019).

<sup>9</sup> CFPB, Supervisory Highlights, 87 FR 26727, 26734 (May 5, 2022).

<sup>10</sup> *Chime, Inc. d/b/a Sendwave*, No. 2023–CFPB–0012 (Oct. 17, 2023) (consent order).

<sup>11</sup> *Id.* at 8. The CFPB also found deceptive acts or practices in actions against Trans-Fast Remittances LLC and Maxitransfers Corp. See *Trans-Fast Remittance LLC, also doing business as New York Bay Remittance*, No. 2020–BCFP–0010 (CFPB filed Aug. 31, 2020) (consent order); *Maxitransfers Corp.*, No. 2019–BCFP–0008 (CFPB filed Aug. 27, 2019) (consent order).

consumers encountering unexpected costs.<sup>12</sup> The CFPB has received consumer complaints about promotional pricing by remittance transfer providers who do not sufficiently inform consumers that the advertised fee or exchange rate is only a limited scope or temporary offer. The CFPB has also observed marketing claims by remittance transfer providers that may mislead consumers about the scope or duration of a temporary low or “no fee” offer or promotional exchange rate.

The CFPB has also received consumer complaints about marketing that omits or obscures the cost of a remittance transfer. Marketing claims by remittance transfer providers may fail to communicate the full cost of a remittance transfer, such as advertising that transfers are “free” or advertising that prominently emphasizes zero fees while only including a vaguely worded statement that additional costs related to the exchange rate may apply. Some of these statements use technical jargon or feature confusing language.

The CFPB has also received consumer complaints about companies that market “free” remittance transfers through digital wallet and other prepaid products, but that fail to sufficiently disclose costs for currency conversion or for withdrawing funds from the product. Companies that offer remittance transfers through digital wallets and other prepaid products often market them as a faster and cheaper way to send remittance transfers. Certain companies' websites market “free account-to-account transfers” or that “receiving money from a friend” is free. Providers may disclose only in fine print, however, that these transfers are only free when there is no currency conversion, and that for the recipient to withdraw and use funds in their local currency, they must pay a currency conversion fee. In addition, some digital wallet providers may not make clear that recipients of a remittance transfer must pay a fee to withdraw funds from the digital wallet or other prepaid product. Examples of such fees include fees to transfer funds to an external bank account, credit card, or prepaid card. Consumers have complained to the CFPB that these fees are unexpected when they convert currencies and withdraw funds

<sup>12</sup> See, e.g., Consumer Complaint 7007332, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7007332>; Consumer Complaint 6845292, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6845292>; Consumer Complaint 1972064, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/1972064>.

transmitted through digital wallets and other prepaid products.<sup>13</sup>

### Analysis

Under the CFPA, it is unlawful for a provider of consumer financial products or services to engage in deceptive acts or practices.<sup>14</sup> A representation, omission, act, or practice is deceptive if it misleads or is likely to mislead the consumer; the consumer's interpretation is reasonable under the circumstances; and the misleading representation, omission, act, or practice is material.<sup>15</sup>

*It is deceptive to market remittance transfers as being delivered within a certain time frame, when transfers actually take longer to be made available to recipients.*

Remittance transfer providers violate the CFPA's prohibition on deceptive acts or practices if they market remittance transfers as being delivered within a certain time frame, when transfers actually take longer to reach recipients. The CFPB "presumes that express claims are material."<sup>16</sup> Furthermore, as noted above, the speed of a remittance transfer is often a crucial consideration for consumers sending remittance transfers.<sup>17</sup> Recipients may rely on remittance transfers for day-to-day expenses or for time-sensitive emergencies.

As illustrated in the CFPB's action against Chime Inc., d/b/a Sendwave, marketing claims about the speed of remittance transfers may violate the prohibition on deceptive acts or practices under the CFPA when the actual time for delivery is longer than advertised.

In the Sendwave case, the provider told consumers that transfers would be delivered "instantly," "in 30 seconds," or "within seconds." These statements were false and misleading because, although a reasonable customer might expect delivery within the time frame advertised, in many instances, transfers were not actually delivered instantly or within seconds for many consumers.<sup>18</sup> In addition, as an express marketing statement regarding a central characteristic of the product—when funds would be available to a

recipient—the misleading representation was material.<sup>19</sup>

Providers must thus take care not to engage in deceptive acts or practices in their marketing claims about the speed of a remittance transfer.

*It is deceptive to market transfers as "no fee" when in fact the remittance transfer provider charges consumers fees to send the remittance transfer.*

Remittance transfer providers violate the CFPA's prohibition on deceptive acts or practices if they market remittance transfers as having "no fee," when in fact the remittance transfer provider charges consumers fees to send the remittance transfer. The cost of sending a remittance transfer is a central consideration for consumers,<sup>20</sup> and, as discussed above, fees are an important component of the cost of a remittance transfer.<sup>21</sup> Expressly misleading price claims violate the prohibition on deceptive practices.<sup>22</sup>

For example, as alleged in the CFPB's action against Chime Inc., d/b/a Sendwave, from at least 2021 to 2022, Sendwave's website advertised that consumers could transfer funds from the United States to Nigeria "with no fees." In fact, consumers were charged fees on all transfers from the United States to Nigeria, despite Sendwave continuing to promote its product as having "no fees" on its website with no qualification or disclaimer.<sup>23</sup>

The CFPB found that Sendwave's representations were likely to mislead the consumer and that the consumer's interpretation would be reasonable under the circumstances. Although Sendwave disclosed a 1 percent transfer fee in the FAQ section of its website, this did not correct the misleading statement or communication made at the top of its web page and on a graphic depicting its mobile app.<sup>24</sup> And as an express marketing statement regarding a central consideration for consumers

when sending a remittance transfer—cost —, the misleading representation about transfer fees was material.<sup>25</sup>

*It may be deceptive to market promotional fees or promotional exchange rates for remittance transfers without sufficiently clarifying when the offer is only limited or temporary.*

Remittance transfer providers may violate the CFPA's prohibition on deceptive acts or practices by advertising promotional pricing for remittance transfers without sufficiently clarifying that the offer is only limited or temporary in scope, even if the promotional nature of the offer is disclosed in fine print or later in the transaction.<sup>26</sup> In such cases, consumers may not understand the pricing is limited and promotional and they may not understand that the cost of sending a remittance transfer through the provider rises after the first or first few transactions.

As the CFPB has articulated, consumers may be reasonably misled when financial service providers fail to clearly and conspicuously disclose material terms in advertising, such as when and by how much charges will increase.<sup>27</sup> Written disclosures or fine print in marketing materials would often be insufficient to correct a misleading statement or representation in marketing communications.<sup>28</sup> When a consumer's first contact with a remittance transfer provider involves deception, "the law may be violated

<sup>13</sup> See FTC, *Policy Statement on Deception* (Oct. 14, 1983).

<sup>14</sup> See *FTC v. Davison Assocs.*, 431 F. Supp. 2d 548 at 560 ("Disclaimers or curative language must be 'sufficiently prominent and unambiguous' such that the overall net-impression of the communication becomes non-deceptive.')

<sup>15</sup> CFPB, *Consumer Financial Protection Circular 2023-01: Unlawful negative option marketing practices* (Jan. 19, 2023), <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2023-01-unlawful-negative-option-marketing-practices/>.

<sup>16</sup> FTC, *Policy Statement on Deception* (Oct. 14, 1983). See also *In re Intuit, Inc.*, No. 9408, at 43 (FTC Opinion, Jan. 19, 2024) ("Disclaimers or qualifications are not adequate to avoid liability 'unless they are sufficiently prominent and unambiguous to change the apparent meaning of the claims and to leave an accurate impression. Anything less is only likely to cause confusion by creating contradictory double meanings.'") (quoting *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989)); *FTC v. Davison Assocs.*, 431 F. Supp. 2d 548 at 560 ("Disclaimers or curative language must be 'sufficiently prominent and unambiguous' such that the overall net-impression of the communication becomes non-deceptive."); *FTC v. Roca Labs*, 345 F. Supp. 3d 1375 at 1392 ("Defendants cannot avoid liability by exclusively advertising that the product costs \$480 without any caveats and then burying the conditions of the discount in a separate disclaimer.')

<sup>19</sup> See FTC, *Policy Statement on Deception* (Oct. 14, 1983).

<sup>20</sup> See Kangni Kpodar, Patrick Amir Imam, *How Do Transaction Costs Influence Remittances?* World Development Vol. 177 (May 2024), <https://doi.org/10.1016/j.worlddev.2024.106537>.

<sup>21</sup> See 2012 Final Rule, 77 FR 6194 at 6199.

<sup>22</sup> See FTC, *Policy Statement on Deception* (Oct. 14, 1983).

<sup>23</sup> *Chime, Inc. d/b/a Sendwave*, No. 2023-CFPB-0012, at 8 (Oct. 17, 2023) (consent order).

<sup>24</sup> See *FTC v. Davison Assocs., Inc.*, 431 F. Supp. 2d 548, 560 (W.D. Pa. 2006) ("Disclaimers or curative language must be 'sufficiently prominent and unambiguous' such that the overall net-impression of the communication becomes non-deceptive."); *FTC v. Roca Labs, Inc.*, 345 F. Supp. 3d 1375, 1392 (M.D. Fla. 2018) ("Defendants cannot avoid liability by exclusively advertising that the product costs \$480 without any caveats and then burying the conditions of the discount in a separate disclaimer.')

<sup>13</sup> See, e.g., Consumer Complaint 2994206, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2994206>.

<sup>14</sup> 12 U.S.C. 5531, 5536.

<sup>15</sup> See FTC *Policy Statement on Deception* (Oct. 14, 1983), [https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf).

<sup>16</sup> See id.

<sup>17</sup> See 2012 Final Rule, 77 FR 6194 at 6199.

<sup>18</sup> *Chime, Inc. d/b/a Sendwave*, No. 2023-CFPB-0012, at 8–9 (Oct. 17, 2023) (consent order).

even if the truth is subsequently made known” to the consumer.<sup>29</sup>

Representations in advertising about “no fee” remittance transfers or specific promotional exchange rates without sufficiently clarifying, when applicable, that the offer is only limited or temporary in scope are presumed to be material, as they relate to cost, a key consumer consideration.

In addition, such statements are likely to be material because of their likely impact on a consumer’s initial and subsequent choice of remittance transfer provider. The impact could be particularly significant for promotions offered to first-time customers who seek to continue using the provider to send remittance transfers. Such consumers may face unexpected higher costs after the expiration of the promotion and may also face unexpected hurdles in searching for a different provider. Had they been aware of the limited promotional nature of the offer, a reasonable consumer may have chosen a different provider.

*It is deceptive to market remittance transfers as “free” if they are not in fact free.*

Remittance transfer providers would also violate the CFPB’s prohibition on deceptive acts or practices by marketing remittance transfers as “free” if they are not actually free for the consumer. For example, it may be deceptive to market a remittance transfer as “free” if the remittance transfer provider is imposing costs on consumers through the exchange rate spread for the transfer or, with respect to digital wallets or other prepaid products, if the provider imposes costs to convert funds into a different currency or to withdraw funds from the product.

The FTC has articulated that, under the FTC Act, offers of “free” services “must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived.”<sup>30</sup> “The word ‘free’ is a lure. It is the bait. It is a powerful magnet that draws the best of us against our will ‘to get something for nothing.’” *Book-of-the-Month Club, Inc.*, 48 F.T.C. 1297, 1312 (1952), *aff’d*, 202 F.2d 486 (2d Cir. 1953).

A consumer should generally expect that a “free” product or service is indeed free, and that the seller “will not directly and immediately recover, in whole or in part, the cost of [] the service.”<sup>31</sup> The FTC has explained that terms, conditions, and obligations that

apply to a “free” item should be set forth clearly, conspicuously, and in close conjunction with the offer of the “free” item, and they should further be made clear at the outset of the offer “so as to leave no reasonable probability that the terms of the offer might be misunderstood.”<sup>32</sup> The same analysis applies to the use of terms that are similar to “free,” such as “gift” or “given without charge.”<sup>33</sup>

The FTC has recently reiterated that representations of “free” in marketing are deceptive when the offer is not in fact free or when limitations, restrictions, or hidden charges are inadequately disclosed, such that the claim is likely to mislead a reasonable consumer about information important to them when choosing a product.<sup>34</sup> As applied here, marketing representations of remittance transfers as free are deceptive under the CFPB if they are not actually free or when limitations, restrictions, or hidden charges are inadequately disclosed.

Marketing a remittance transfer as “free” is likely to cause a reasonable consumer to believe they are sending a remittance transfer without the provider imposing a cost to the consumer. Such interpretation would be incorrect—but reasonable—in instances where the remittance transfer provider is imposing costs through the exchange rate spread for the transfer. In this situation, a remittance transfer provider’s claim that the transfer is “free” would be false and thus likely to be deceptive because there

<sup>32</sup> 16 CFR 251.1(c). See also *In re Intuit, Inc.*, No. 9408, at 36–52 (FTC Opinion, Jan. 19, 2024); Lesley Fair, *Full Disclosure*, FTC Business Blog (Sept. 23, 2014), <https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure> (describing the FTC’s “4Ps”—prominence, presentation, placement, and proximity—four key considerations to help business ensure their advertisements are clear and conspicuous).

<sup>33</sup> 16 CFR 251.1(i) (applying same deception analysis to terms similar to “free,” such as “gift,” “given without charge,” or “other words or terms which tend to convey the impression to the consuming public than an article of merchandise or service is “Free”).

<sup>34</sup> See *In re Intuit, Inc.*, No. 9408 (FTC Opinion, Jan. 19, 2024). The FTC regularly brings cases against companies for “inadequate disclosures of hidden charges in ostensibly ‘free’ offers and other products or services.” FTC, *Enforcement Policy Statement Regarding Negative Option Marketing*, 86 FR 60822, 60823 (Nov. 11, 2021). Both the CFPB and the FTC have also taken action against companies that advertised “free” products and services and deceptively enrolled consumers in a negative option plan. Cf. *Equifax Inc. and Equifax Consumer Services LLC*, No. 2017–CFPB–0001 (filed Jan. 3, 2017) (consent order); *Transunion Interactive, Inc. et al.*, No. 2017–CFPB–0002 (filed Jan. 3, 2017) (consent order); *FTC v. Health Formulas, LLC*, No. 2:14–cv–01649 (D. Nev. 2016); *FTC v. Complete Weightloss Center*, No. 1:08–cv–00053 (D.N.D. 2008).

was a cost imposed on the transfer through the exchange rate spread.<sup>35</sup>

Remittance transfer providers should also be aware of the risk of deception when marketing “free” remittance transfers for digital wallets or other prepaid products. A claim that remittance transfers are “free” may be misleading if the provider in fact imposes costs for recipients to convert funds into a different currency or to withdraw funds from the product. In these circumstances, marketing “free” transfers may constitute a misrepresentation of the terms for the remittance transfer provider’s services that may mislead a reasonable consumer, even with subsequent disclosure of such fees.

### About Consumer Financial Protection Circulars

*Consumer Financial Protection Circulars* are issued to all parties with authority to enforce Federal consumer financial law. The 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).

<sup>35</sup> See *In re Intuit, Inc.*, No. 9408, at 46 (FTC Opinion, Jan. 19, 2024) (finding liability for false misrepresentations about “free” services where it was false ⅓ of the time).

<sup>29</sup> FTC, *Policy Statement on Deception* (Oct. 14, 1983).

<sup>30</sup> FTC, *Guide Concerning the Use of the Word “Free” and Similar Representations*, 16 CFR 251.1(a)(2).

<sup>31</sup> 16 CFR 251.1(b).

*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.

**Rohit Chopra,**

Director, Consumer Financial Protection Bureau.

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## CONSUMER FINANCIAL PROTECTION BUREAU

### 12 CFR Chapter X

#### Consumer Financial Protection Circular 2023-03: Adverse Action Notification Requirements and Proper Use of Sample Forms

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Consumer financial protection circular.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB) has issued Consumer Financial Protection Circular 2023-03, titled, "Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B." In this circular, the CFPB responds to the question, "When using artificial intelligence or complex credit models, may creditors rely on the checklist of reasons provided in CFPB sample forms for adverse action notices even when

those sample reasons do not accurately or specifically identify the reasons for the adverse action?"

**DATES:** The CFPB released this circular on its website on September 19, 2023.

**ADDRESSES:** Enforcers, and the broader public, can provide feedback and comments to [Circulars@cfpb.gov](mailto:Circulars@cfpb.gov).

**FOR FURTHER INFORMATION CONTACT:** George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202-435-7700 or at: <https://reginquiries.consumerfinance.gov/>.

#### SUPPLEMENTARY INFORMATION:

##### Question Presented

When using artificial intelligence or complex credit models, may creditors rely on the checklist of reasons provided in CFPB sample forms for adverse action notices even when those sample reasons do not accurately or specifically identify the reasons for the adverse action?

##### Response

No, creditors may not rely on the checklist of reasons provided in the sample forms (currently codified in Regulation B) to satisfy their obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon.

##### Analysis

The Equal Credit Opportunity Act (ECOA), implemented by Regulation B, makes it unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.<sup>1</sup> ECOA and Regulation B require that, when taking adverse action against an applicant, a creditor must provide the applicant with a statement of reasons for the action taken.<sup>2</sup> This statement of reasons must be "specific" and indicate the "principal reason(s) for

the adverse action";<sup>3</sup> moreover, the specific reasons disclosed must "relate to and accurately describe the factors actually considered or scored by a creditor."<sup>4</sup> Adverse action notice requirements promote fairness and equal opportunity for consumers engaged in credit transactions, by serving as a tool to prevent and identify discrimination through the requirement that creditors must affirmatively explain their decisions. In addition, such notices provide consumers with a key educational tool allowing them to understand the reasons for a creditor's action and take steps to improve their credit status or rectify mistakes made by creditors.<sup>5</sup>

The CFPB provides sample forms (currently codified in Regulation B) that creditors may use to satisfy their adverse action notification requirements, if appropriate. These forms include a checklist of sample reasons for adverse action which "creditors most commonly consider,"<sup>6</sup> as well as an open-ended field for creditors to provide other reasons not listed. The sample forms are used by creditors to satisfy certain adverse action notice requirements under ECOA and the Fair Credit Reporting Act (FCRA), though the statutory obligations under each remain distinct.<sup>7</sup> While the

<sup>3</sup> 15 U.S.C. 1691(d)(3); 12 CFR 1002.9(b)(2).

<sup>4</sup> 15 U.S.C. 1691(d)(3); 12 CFR 1002.9(b)(2).

<sup>5</sup> *See Fischl v. Gen. Motors Acceptance Corp.*, 708 F.2d 143, 146 (5th Cir. 1983); S. Rep. 94-589, 94th Cong., 2d Sess., at 4, *reprinted in* 1976 U.S.S.C.A.N. 403, 406.

<sup>6</sup> 12 CFR part 1002, (app. C), comment 3.

<sup>7</sup> Like ECOA, FCRA also includes adverse action notification requirements. *See* 15 U.S.C. 1681m(a)(2). For example, when a person takes adverse action based in whole or in part on any information contained in a consumer report and has used a credit score, the person must disclose the credit score and, among other items, the "key factors that adversely affected the score of the consumer," the total of which shall generally not exceed four (except if a key factor was the number of inquiries made with respect to a consumer report). 15 U.S.C. 1681g(f)(1)(C), 1681m(a)(2). Although this circular is focused on ECOA's adverse action notification requirements, similar principles apply under FCRA when a person must disclose the "key factors that adversely affected the credit score of the consumer." 15 U.S.C. 1681g(f)(1)(C); *see also* 1681g(f)(2)(B) (defining "key factors" to mean "all relevant elements or reasons adversely affecting the credit score of the particular individual, listed in the order of their importance based on their effect on the credit score"). Despite similar underlying principles, the statutory obligations under FCRA and ECOA are distinct. *See* 12 CFR part 1002 (supp. I), sec. 1002.9, para. 9(b)(2)-9 ("Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit."). Moreover, while ECOA's requirements only apply to creditors, FCRA's adverse action notice requirements apply to "any person" that takes adverse action based in

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<sup>1</sup> *See* 15 U.S.C. 1691(a).

<sup>2</sup> *See* 15 U.S.C. 1691(d)(2); 12 CFR 1002.9(a)(2)(i); *see also* 12 CFR 1002.9(a)(2)(ii) (allowing creditors the option of providing notice or following certain requirements to inform consumers of how to obtain such notice).