

ALERTS

CFPB Issues Proposed Rule to Provide Additional Federal Consumer Protections for Prepaid Products

November 18, 2014

On Nov. 13, the Consumer Financial Protection Bureau (“CFPB”) issued for public comment a proposal to create a new federal regulatory regime providing consumer protections for prepaid products (the “Proposed Rule”).^[1] Generally, the Proposed Rule adds the term “prepaid account” to covered accounts under Regulation E^[2] and adds specific provisions in Regulation E that apply to prepaid accounts. The Proposed Rule also amends Regulation Z^[3] to provide consumer protections to overdraft services and credit features related to prepaid accounts. Comments will be due 90 days after the Proposed Rule is published in the *Federal Register*, which is expected to occur shortly.

In May 2012, the CFPB issued an Advance Notice of Proposed Rulemaking (the “ANPR”)^[4] requesting comments and information about general-purpose reloadable prepaid cards (“GPR Cards”). After the CFPB reviewed comments submitted in response to the ANPR and conducted various research and outreach efforts, it expanded the coverage of the Proposed Rule beyond that of the ANPR, so more prepaid products and providers would be affected.

Over the past decade, there has been a significant amount of growth and innovation in the prepaid/stored value space. The CFPB has pointed out that prepaid products have been “among the fastest growing types of payment instruments in the United States.” The Proposed Rule would broadly cover a number of types of prepaid products, including reloadable and non-reloadable GPR Cards, payroll cards, person-to-person payment

services and prepaid products that can access ATMs. However, the Proposed Rule would not cover the following products: general-use prepaid cards marketed and labeled as gift cards; loyalty, award and promotional cards; and closed-loop store gift cards.[5] The Proposed Rule would capture a variety of distribution channels such as physical cards, online accounts and mobile devices (e.g., digital wallets).

Based on the CFPB's outreach and research, it believes that certain aspects of the prepaid industry may increase the risk of consumer harm. Areas of concern for the CFPB include, among others: (1) the use of prepaid products by unbanked and underbanked consumers; (2) how fee information is currently disclosed for prepaid cards sold at retail locations and for payroll cards; and (3) revenue-sharing arrangements between prepaid providers and colleges/universities in connection with prepaid products provided to students.

Broadly, the Proposed Rule is designed, in part, to enable consumers to comparison shop among prepaid products by imposing specific requirements related to the content, timing and format of fee disclosures applicable to prepaid products. The Proposed Rule would amend Regulation E to require "financial institutions"[6] (1) to disclose information about fees before a consumer acquires a prepaid account (the proposal requires short- and long-form disclosures and provides model forms); (2) to provide information about transaction history (similar to the existing Regulation E provisions related to payroll cards[7]); (3) to adopt error resolution procedures for and to limit liability for unauthorized transactions to registered prepaid accounts; and (4) to submit copies of prepaid account agreements to the CFPB so that the CFPB can post the agreements on its website. The Proposed Rule would also amend Regulation Z to limit and restrict overdraft and other credit features available in connection with prepaid products.

SRZ is reviewing the Proposed Rules and will issue another *Alert* that includes a summary of its provisions. In the meantime, if you have any questions, or would like assistance in preparing a comment letter, please contact your attorney at Schulte Roth & Zabel LLP or one of the following attorneys: Donald J. Mosher, Joseph P. Vitale, Jessica Sklute, Kara A. Kuchar, or Melissa G.R. Goldstein.

[1] The Proposed Rule has not yet been published in the *Federal Register*. A draft version of the Proposed Rule is currently available on the CFPB's

website.

[2] 12 C.F.R. Part 1005.

[3] 12 C.F.R. Part 1026.

[4] 77 Fed. Reg. 30923 (May 24, 2012).

[5] These exceptions follow similar applicable exemptions in the CARD Act (111 P.L. 24). See 15 U.S.C. § 1693i-1 and 12 C.F.R. Part 1005.20.

[6] Under Regulation E, the term “financial institution” generally means “a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.” 12 C.F.R. Part 1005.2.

[7] 12 C.F.R. Part 1005.18.

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