

CFPB Observer: Recent Developments from Nov. 10-14, 2014

CFPB Issues Proposed Rule to Regulate Prepaid Products

On Nov. 13, the CFPB issued a [proposed rule](#), which has been in development for over two years, that would impose new requirements on prepaid products. The CFPB issued an [Advance Notice of Proposed Rulemaking](#) on prepaid cards in May 2012 and also released a [study of the prepaid market](#) in conjunction with the issuance of the proposed rule. Broadly, the proposed rule would apply several of the requirements imposed under the Electronic Funds Transfer Act to prepaid products. In addition, the rule would impose “Know Before You Owe” disclosures and would also require that financial institutions adhere to credit card protections for credit products offered in connection with a prepaid account.

The rule would generally apply to prepaid products, which the CFPB describes as “consumer accounts typically loaded with funds by a consumer or by a third party, such as an employer.” However, the scope of the proposed rule is quite broad as it would also cover mobile and electronic prepaid accounts that can store funds, such as PayPal. In addition, it is likely that it will extend to cover virtual currencies.

Since many consumers utilize prepaid products as an alternative to traditional checking accounts, the proposed rule would ensure that prepaid products enjoyed similar protections under the Electronic Fund Transfer Act. These protections would include: (1) periodic statements or account information otherwise made easily accessible online and for free; (2) error resolution procedures to resolve double-charges or incorrect charge amounts; and (3) fraud and lost-card protections, with consumer liability limited to \$50.

Under the CFPB’s proposed “Know Before You Owe” protections, prepaid card issuers would have to provide consumers with disclosures about the prepaid account. This would include a short-form disclosure with prepaid account information, including common costs like the monthly fee, fee-per-purchase, ATM withdrawal cost and fee to reload cash onto the account. In addition, a long-form disclosure would be required that would contain any other potential fees that could be imposed other than the fees contained on the short-form disclosure. Financial institutions would also be required to post their account agreements online in an effort to facilitate consumer shopping.

Finally, the proposed rule would also impose requirements on credit products that are offered in conjunction with prepaid products. These consumer protections, which are similar to those required for traditional credit cards, would include the following: (1) prepaid companies would be required to make an ability-to-repay determination before offering credit; (2) monthly periodic statements would be required; (3) a 21-day repayment grace period would have to be provided before issuers could impose a

late fee; (4) a fee cap limited to 25 percent of the credit limit would be imposed; and (5) a 30-day waiting period would be required before issuers could offer credit after opening prepaid accounts.

The proposed rule and disclosures will be open for public comment for 90 days after its publication in the Federal Register.

CFPB Takes Action Against Mortgage Lender for Alleged Violation of Anti-Steering Rule

On Nov. 13, the CFPB entered a [consent order](#) with a mortgage lender to settle allegations that the lender had violated the Federal Reserve Board's loan originator compensation rule, which the CFPB has enforced since July 21, 2011. The rule prohibits any person from compensating loan officers based on a term or condition of a mortgage loan, such as the interest rate. In the [complaint](#), the CFPB alleged that the lender awarded its employees quarterly bonuses that were based, at least in part, on the interest rates of the loans they originated. Under the terms of the consent order, the lender has agreed to end this compensation practice and to pay \$730,000 in redress to affected consumers. No civil monetary penalty was imposed because of the lender's financial condition.

The Consumer Financial Protection Bureau (CFPB), created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, implements and enforces federal consumer financial law. Greenberg Traurig monitors the CFPB's activities, including the almost daily movement on multiple industry fronts that the CFPB makes as it redefines consumer finance law. An entirely new system has been and is being created for the consumer financial services industry. Once complete, the question will be, "How does our clients' business match up?" Our GT CFPB Team regularly observes and analyzes the actions of the CFPB in order to advise clients in best practices, risk management and compliance procedures.

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