



CFPB ISSUES PROPOSED RULE FOR PREPAID PRODUCTS

On Thursday, the Consumer Financial Protection Bureau ("CFPB") issued a proposed rule to extend certain protections under the Electronic Funds Transfer Act's implementing Regulation E and the Truth in Lending Act's implementing Regulation Z to prepaid financial products. The CFPB also published a study on the prepaid market.

The CFPB's proposed rule defines a "prepaid account," as a card, code or other device, which is established primarily for personal, family or household purposes, and which:

- (1) Is either issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter; and
- (2) Is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers.

"Prepaid account" would expressly include payroll card accounts and government benefit accounts, but exclude (i) gift certificates; (ii) store gift cards; (iii) loyalty, award or promotional gift cards; and (iv) general-use prepaid cards that are both marketed and labeled as a gift card or gift certificate.

Regulation E Extended

Under the proposed rule, Regulation E's definition of "account" would include a "prepaid account" and following protections would be extended to prepaid account consumers:

- Periodic statements or free online access to account information;
- Error investigation and resolution in a timely manner; and
- Limited liability for unauthorized charges (\$50) if consumers promptly notify their financial institution of unauthorized charges.

"Know Before You Owe" Disclosures

The proposed rule includes so-called "Know Before You Owe" disclosures for prepaid products. Financial institutions that offer prepaid accounts would have to provide short-form and long-form disclosures before a consumer acquires a prepaid account. For

certain prepaid products sold in retail stores, the proposed rule allows prepaid account issuers to provide only the short-form notice before a consumer acquires a prepaid product. The short-form disclosure displays only certain fees, including a monthly fee, a fee per purchase, ATM withdrawal costs and a fee to reload cash onto the account. The long-form disclosure includes all fees charged in connection with the prepaid account. The CFPB has created model forms for the short-form and long-form disclosures. Prepaid account agreements must also be posted on the prepaid account issuer's website and the CFPB's website.

Ancillary Features

In addition to regulating prepaid products generally, the proposed rule sets forth provisions that specifically apply to prepaid accounts that offer credit or overdraft services. Such prepaid accounts would constitute "credit card accounts under an open-end (not home-secured) consumer credit plan" under Regulation Z and would be subject to the credit card provisions in Regulation Z and the Credit Card Accountability Responsibility and Disclosure Act of 2009. Specifically, prepaid account issuers would have to:

- Verify that consumers have the ability to repay the debt before extending credit;
- Provide certain periodic statement disclosures;
- Give consumers at least 21 days to repay their debts before charging a late fee;
- Charge consumers fees that are "reasonable and proportional" to the violation of account terms;
- Limit the total of fees to 25% of the credit limit in the first year of the credit account; and
- Limit any interest rate increase on an existing account unless (i) a prepaid account holder has missed two (2) consecutive payments or (ii) for new purchases, consumers have been provided 45 days prior notice of the interest rate change and are allowed to cancel their accounts.

Other Limitations

Finally, the proposed rule regulates the marketing of credit features and the repayment of credit balances with prepaid products. Prepaid companies must wait 30 calendar days after a prepaid

Darrell L. Dreher
ddreher@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Elizabeth L. Anstaett
eansaett@dtlaw.com

Charles V. Gall
cgall@dtlaw.com

Susan M. Manship
smanship@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

To see all previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dtlaw.com

Margaret M. Stolar
mstolar@dtlaw.com

Robin R. De Leo
robin@dreher-la.com

Susan L. Ostrander
sostrander@dtlaw.com

Emily C. Barlage
ebarlage@dtlaw.com



account has been registered to offer credit products to prepaid account holders. Prepaid companies also may not take funds loaded onto a prepaid account to repay a credit balance unless the consumer has affirmatively opted in to allowing such repayment.

The comment period for the proposed rule closes 90 days after the proposed rule has been published on the federal register. The rule is lengthy and merits careful analysis. □

✧ *Mike Tomkies and Susan Manship*