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Corporate Update

Proposed Rules for Prepaid Products Issued by Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau (“CFPB”) is proposing to amend Regulations E and Z, adopted under the Electronic Funds Transfer Act of 1978, as amended, and the Truth in Lending Act of 1968, as amended, to further regulate prepaid card products (the “Proposed Rule” or “Proposal”). The Proposal would expressly bring such products within the realm of Regulation E as prepaid accounts and create new provisions specific to such accounts. The comment period has already been closed; therefore, the CFPB may soon be issuing final rules.

Initial Disclosures

The Proposed Rule includes standardized “Know Before You Owe” or “pre-acquisition” disclosure requirements, to be received by the consumer before acquiring a prepaid account. Disclosures include all types of imposed fees; a statement regarding whether credit related fees apply, and the number of other fees that could be imposed; telephone number and website address; a statement that consumer must register the card with the issuer in order to fund the account; a statement if amounts funded do not qualify for FDIC or NCUSIF (National Credit Union Share Insurance Fund) insurance; link to CFPB’S website.

Billing Statements

The Proposed Rule would require either periodic statements or “easily accessible” online statements to be provided to the consumer.

The Proposal would expand from 60 days to 18 months the account history that must be available to consumers in online statements.

Posting of Cardholder Agreements

Issuers must post their account agreements on their websites and submit them to the CFPB.

Dispute Resolution

Issuers must investigate and resolve disputes within 10 business days of receiving notice from a consumer regarding an alleged error, or within 45 days, if the issuer provides the consumer with a provisional credit for the disputed amount.



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If unable to complete investigation within 45 days, the issuer must temporarily credit the disputed amount to the consumer while the issuer completes its investigation.

Consumer Liability

The Proposed Rule retains three tiers of liability for unauthorized transfers of registered prepaid products, depending on when the consumer learned of the loss or theft of a prepaid card; when the financial institution received notice of such loss or theft; and when the financial institution transmitted or made available to the consumer the periodic statement showing the first unauthorized transaction.

Credit Features

- Under the Proposed Rule, Regulation Z prepaid card protections would apply if the prepaid product allows “consumers to spend more money than they have deposited into the prepaid account”.
- Overdrafts would be permissible but an issuer has to treat them as “credit” under a credit card plan.
- Credit Provisions under the Proposed Rule would include:
 - Ability to repay analysis
 - Providing monthly periodic statements
 - Requiring at least 21 days to repay amounts associated with a credit feature prior to assessing any late fees
 - Fees must be “reasonable and proportional” to the account violation
 - Total fees must not exceed 25% of credit feature amount
 - Restricting increases on interest rates applicable to use of a credit feature, unless the cardholder has missed 2 consecutive payments
 - Requiring 45 – day advance notice of any interest rate increases so that the consumer may cancel credit feature
- Issuers would have to wait 30 days from the time that the consumer registers the prepaid account before offering credit features to the consumer.
- Limits the ability of an issuer to use prepaid funds to repay credit feature amounts.
- Prohibits issuers from requiring payment within 21 days from the time the periodic statement is mailed.

At Reichard & Escalera we can assist financial institutions in providing an in-depth analysis of the applicability of the regulatory requirements under these Proposed Rules, updating internal procedural documentations for operational changes, and developing training programs to keep its staff updated with the constantly changing regulations.

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