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Client Alert

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CFPB Releases the 2017 CARD Act Report: Early Takeaways from the New CFPB's First Report on the Consumer Credit Card Market

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Yesterday, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") released its biennial report on the consumer credit card market ("2017 Report" or "Report"), which summarizes its views on the state of the consumer credit card market over the past two years. The Report is particularly noteworthy because it provides the first insight into the post-Cordray CFPB's views on the state of the consumer credit card market.

The Report was issued pursuant to Section 502(a) of the CARD Act ("CARD Act"),[1] which directs the CFPB to review and report on the consumer credit card market. The CARD Act requires the CFPB's report to review specific certain topics, including terms of credit card agreements and issuer practices, the effectiveness of disclosures, the adequacy of consumer protections, and whether the CARD Act has impacted any of these areas. Prior CARD Act reports also have addressed other market developments, and the 2017 Report continues this trend.

The 2017 Report is informed by public responses to the Bureau's March 2017 request for information ("RFI"),[2] as well as a number of other data sources, including data from the Bureau's Consumer Credit Panel and de-identified data collected by the Federal Reserve Board from bank holding companies.

In contrast with prior CARD Act reports, the 2017 Report is more neutral in tone and does not identify supervisory or enforcement priorities, specify CFPB policy, or list "areas of potential concern."[3] In general, the 2017 Report states that "[t]he quantitative and qualitative indicators outlined generally suggest a positive picture for consumers in the credit card market." The 2017 Report provides in-depth analyses on several of the "deep-dive" topics introduced in the 2015 Report, as well as two new topics affecting the credit card market: products developed for consumers with "non-prime" credit scores and third-party credit card comparison ("TPC") websites.

This alert highlights a few early takeaways from the 2017 Report. We will continue to unpack the 350+ page report—the 2017 Report is the longest CARD Act report to date—and will follow up with a more detailed analysis in the coming days.

[1] 15 U.S.C. § 1616(a).

[2] See our alert on the RFI here.

[3] See our earlier summaries of the Bureau's s initial 2013 CARD Act Report ("2013 Report") and subsequent 2015 CARD Act Report ("2015 Report").

EARLY TAKEAWAYS

- *Cost and Availability of Credit.* The Report finds that the cost of card credit has remained stable since 2015; however, the Bureau noted the cost increase for variable rate accounts due to increases in the index rate. Despite indicating that credit availability is difficult to measure, the 2017 Report states that "credit availability is significant and increasing." According to the Bureau, steady increases in the number of accounts originated on these accounts and the volume of credit originated on those accounts indicate an increase in the availability of credit.

- *Credit Card Issuer Practices.* The 2017 Report analyzes select credit card issuer practices that the CFPB had not focused on in earlier CARD Act reports. For example, the 2017 Report finds that digital account servicing platforms have increased, and a majority of consumers are enrolled in online servicing portals. The Report also analyzes consumer credit score access, and states that financial service providers "have made credit scores and related information regularly available to their customers," and that credit card issuers were among "the most prominent class of providers doing so."

The Bureau also looks at whether credit cards have become more or less complicated over time. The Bureau states that its analysis "does not *evaluate* complication, but simply seeks to track the metric over time." (Emphasis in original.) The Report concludes that the evidence "offers support for a hypothesis of slight but still real declines in how complicated credit card products are," while acknowledging the limitations of its methodology.

- *Products Marketed to Non-Prime Borrowers.* Products marketed to "non-prime borrowers" are another new area of CFPB study in the 2017 Report. The Report states that, because non-prime borrowers have difficulty obtaining certain credit products, a new market for such consumers wishing to obtain credit products has emerged. Consistent with the tone of the rest of the Report, the Bureau does not take a position on whether products marketed to "non-prime borrowers" raise policy issues. Instead, the CFPB describes several features of this market, including that (i) non-prime borrowers hold more of their outstanding balances on private-label credit cards, which are more accessible to these consumers; (ii) the share of the market for secured credit cards, which help such consumers build credit, is growing; and (iii) issuers may be putting increasing weight on credit line management as a risk control mechanism. In fact, the Bureau's report indicates that such products may be beneficial to those with non-prime credit scores, since products such as secured credit cards present lower risk of default.

- *Third-Party Comparison Sites.* The 2017 Report also takes a "deep dive" into TPC sites, which are neither owned nor operated by credit card issuers. The Report finds that these TPC sites have "ballooned in their aggregate effect on the market," as issuers have paid such sites more than $1 billion for credit card approvals in 2016. The Report describes the utility of TPC sites, including decreased issuer risk when investing in marketing; increased issuer branding and relationship development with consumers; and the ability for consumers to obtain more information about multiple credit card products at once (as opposed to lead generation products).

- *Deferred Interest Products.* The 2015 Report took a critical look at deferred interest products, citing such products as "the most glaring exception" to the general post-CARD Act trend toward upfront credit card pricing. In contrast, the 2017 Report finds that deferred interest promotions "benefit consumers who pay their promotional balance in full within the promotional period," while being "more costly for consumers who do not." The 2017 Report notes that the aggregate amount of deferred interest assessed to consumers increased by 10 percent from 2015 to 2016.

- *Debt Collection.* The 2015 Report pointed to the substantial risks inherent in debt collection and cited to the fact that it received more than 88,000 complaints from consumers about debt collection in 2014. The 2017 Report describes issuers' debt collection efforts, whether in-house or by first-party or third-party collectors. The Report includes a review of the market and how issuer collection practices have evolved since the implementation of the CARD Act but does not call for regulation of either third-party or first-party collections activities.
- *Product Innovation.* The 2017 Report also addresses new product innovations. For example, the Report notes that the adoption of EMV chip cards in the credit card industry reduced counterfeit fraud by roughly 58 percent, while card-not-present instances of fraud have increased, particularly with respect to online transactions. The Report also reviews innovations that that allow consumers to store and access payment information on mobile devices; the continued growth of emerging lending products, such as fintech personal loans and point-of-sale loans; and card controls that can help consumers manage their spending and lower the likelihood of fraudulent transactions.
- *Rewards Programs.* The 2015 Report identified potential areas of concern related to rewards programs, specifically with respect to disclosures, rewards costs, and the timing of rewards disbursement. The Bureau's discussion of rewards programs in the 2017 Report is limited to describing developments in rewards programs and market behavior.

CONCLUDING THOUGHTS

Prior CARD Act Reports have identified supervisory or enforcement priorities in the credit card market or signaled policy direction. The 2017 Report departs from this approach, reporting on market developments rather than signaling policy or otherwise making recommendations for the credit card market.

We expect to provide a more detailed analysis in the coming days.

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