

Client Alert.

May 29, 2012

CFPB Announces Advance Notice of Proposed Rulemaking On General-Purpose Reloadable Prepaid Cards

By **L. Richard Fischer, Obrea O. Poindexter and Sean Ruff**

The Consumer Financial Protection Bureau (“CFPB”) has released an advance notice of proposed rulemaking (“ANPR”) to collect information about prepaid cards, specifically general-purpose reloadable prepaid cards (“GPR cards”), including bank-issued GPR cards. The CFPB says it is interested in learning more about GPR cards, including the related costs, benefits, and potential risks to consumers. In particular, the CFPB plans to use the information gathered in connection with the ANPR to determine whether to extend the consumer protections of Regulation E to GPR cards. Comments are due July 23, 2012.

In the supplemental information accompanying the ANPR, the CFPB discusses the widespread use of GPR cards by consumers, but expresses concern that consumers may not be aware that GPR cards do not have protections commensurate with those of other products, such as bank-issued debit cards and credit cards.

The growth of prepaid cards and the lack of uniform federal regulation prompted the CFPB to assess the need for additional consumer protections. In this regard, CFPB Director Richard Cordray said that “[t]he people who use prepaid cards are, in many instances, the most vulnerable among us.”

The CFPB indicated it is focused on four broad categories of information: (1) regulatory coverage of GPR cards by some or all of the provisions of Regulation E, (2) product fees and disclosures, (3) product features, and (4) other information on GPR cards. The ANPR includes several questions relating to prepaid cards:

(1) REGULATORY COVERAGE OF GPR CARDS

The CFPB seeks input on how GPR cards should be covered by Regulation E. Specifically, the CFPB seeks input on:

- How GPR cards should be defined under Regulation E, including whether university cards, government cards and health spending cards should be covered;
- Whether the Regulation E-lite approach applicable to payroll cards should apply to GPR cards; and
- Whether particular aspects of Regulation E should apply to GPR cards, such as limited liability for unauthorized transactions and the requirement to deliver paper periodic statements.

(2) PRODUCT FEES AND DISCLOSURES

The CFPB seeks input on how to best provide “transparent, useful, and timely fee disclosures.” In particular, the CFPB requested feedback on:

- How market participants can convey the most important contractual terms to consumers;
- Whether disclosures should enable a consumer to comparison shop; and

Client Alert.

- Whether the existence of federal deposit insurance coverage, or the lack thereof, should be disclosed.

(3) PRODUCT FEATURES

The CFPB also solicits comment on several product features: linking of credit products, overdrafts, savings accounts and cards with claims of credit-building attributes. In particular, the CFPB seeks information on whether regulations should address how such services are marketed to consumers.

(4) OTHER INFORMATION

The CFPB requests comment on the costs of regulatory compliance, as well as how market participants communicate information to cardholders after the purchase of a GPR card.

In addition to releasing the ANPR on GPR cards, the CFPB also launched “Ask CFPB: Prepaid Cards,” which is an online tool designed to educate consumers about GPR cards, including a general overview of features, fees, reloading and usage.

The CFPB announced the release of the ANPR at a Prepaid Card Field Hearing, during which CFPB Director Richard Cordray spoke. Director Cordray’s speech was followed by an expert panelist discussion. The panel was comprised of CFPB staff and community, civil rights and industry experts. Consumer group representatives focused on the high fees associated with some GPR cards when compared to traditional deposit accounts and regulatory gaps that may create consumer protection issues; they also recommended that credit features, such as overdraft or direct deposit advance should not be permitted for GPR cards. In contrast, comments by industry group representatives centered on maximizing consumer choice, emphasizing that a one-size-fits-all approach is not appropriate for the prepaid card market. Industry representatives also noted that the costs of GPR cards have been trending down while the costs of checking accounts are increasing, thus demonstrating that GPR cards are an increasingly cheaper and more affordable alternative.

Below are links to the CFPB’s press release and ANPR.

PRESS RELEASE:

<http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-considers-rules-on-prepaid-cards/>

ANPR:

http://files.consumerfinance.gov/f/201205_cfpb_GPRcards_ANPR.pdf

Client Alert.

Contact:

L. Richard Fischer

(202) 887-1566

lfischer@mofo.com

Obrea O. Poindexter

(202) 887-8741

opoindexter@mofo.com

Sean Ruff

(202) 778-1665

sruff@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for eight straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.