



Dodd-Frank Financial Reform Law

ALERT

MAY 2012

LOEB & LOEB adds Knowledge.

CFPB Initiates Rulemaking, Seeks Information on Reloadable Prepaid Cards

The Consumer Financial Protection Bureau (CFPB) has announced an [Advance Notice of Proposed Rulemaking](#) and request for information concerning general purpose reloadable prepaid cards, also known as GPR cards. CFPB Director Richard Cordray announced the inquiry May 23, 2012, at a field hearing in Durham, N.C., on prepaid cards. The Bureau intends to issue a proposal extending Regulation E of the Board of Governors of the Federal Reserve System, governing electronic fund transfers including automated teller machine and point-of-sale transfers, to cover these prepaid cards, and is seeking information about potential consumer-protection issues raised by the current design, marketing, and use of these cards.

GPR cards are a subset of the prepaid card market, which includes “closed-loop cards” (cards that can only be used at one merchant or group of merchants) and “open-loop cards” (cards that can be used at any merchant that accepts payment through an electronic payment network). GPR cards may look like traditional debit and credit cards, and can be used for payroll deposits, to transfer funds to family and friends, or simply as a way to store cash for purchases. Once a card is drawn down, it may be reloaded. The GPR cards may also take the form of a key fob or cell phone application connected to a financial account.

The proposed regulations would cover only reloadable prepaid cards, and not gift cards, payroll cards, “closed loop” cards, debit cards associated with traditional bank checking accounts, non-reloadable cards, or electronic benefit transfers.

The Advanced Notice of Proposed Rulemaking identified three areas of concern for the Bureau: growth of the market for GPR cards, consumer use, and the lack of comprehensive

federal regulation. The rapid growth of GPR card users – the two largest issuers of these cards report that the number of active GPR cards more than doubled from nearly 3.4 million cards in first quarter of 2009 to more than 7 million in first quarter of 2012 – as well as projections for continued future growth, indicate the need for evaluation of whether potential risks to consumers will also increase, according to the CFPB.

The Bureau also noted that while consumers may view and use GPR cards as checking-account substitutes, and issuers have marketed these cards that way, the cards are not subject to federal regulations governing checking accounts and electronic transactions involving checking accounts. In addition, while certain issuers of GPR cards do provide contractual protections, neither Regulation E nor the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (restricting the ability of issuers to impose dormancy fees, service fees and expiration dates on gift cards) apply to GPR cards. The level of protection also may vary from issuer to issuer, and the issuers may choose to change the terms of protection unilaterally. The CFPB expressed concern that the current lack of comprehensive federal regulation may contribute to market distortions and misaligned incentives, as well as consumer confusion if GPR card consumers assume that they possess certain rights enforceable under federal law.

The Bureau seeks information in response to 10 questions, grouped into four areas:

- regulatory coverage, including how the Bureau should define GPR cards in the context of Regulation E and

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

whether only certain provisions of the regulation should apply to these cards;

- product fees and disclosures, including how the CFPB should regulate to ensure that consumers receive adequate disclosures, how the Bureau can assist consumers in comparing competing GPR cards, and how the existence or lack of Federal Deposit Insurance Company pass-through coverage for some cards should be conveyed;
- product features, including the costs, benefits, and consumer protection issues of overdraft protection and savings account features, as well as the availability, efficacy and marketing of features that claim to offer consumers the opportunity to improve or build their credit; and
- information relating to methods of communicating changes in contract terms and other information to consumers, card inventory cycles, system maintenance and compliance issues, as well as any other information that would help the Bureau in its rule making.

Comments must be submitted by July 23, 2012. The CFPB has not indicated when it expects to complete the study.

For more information about the content of this alert or for assistance in submitting comments, please contact Michael Thurman at mthurman@loeb.com or Michael Mallow at mmallow@loeb.com.

Attorneys

DAVID P. ANSEL	DANSEL@LOEB.COM	212.407.4837
STEPHEN H. COHEN	SCOHEN@LOEB.COM	212.407.4279
DAVID C. FISCHER	DFISCHER@LOEB.COM	212.407.4827
WILLIAM M. HAWKINS	WHAWKINS@LOEB.COM	212.407.4126
MICHAEL W. JAHNKE	MJAHNKE@LOEB.COM	212.407.4285
CHRISTOPHER J. KELLY	CKELLY@LOEB.COM	310.282.2263
ROBERT B. LACHENAUER	RLACHENAUER@LOEB.COM	212.407.4854

Loeb & Loeb's Dodd-Frank Financial Reform Task

Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas – including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance – who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide.

This client alert is a publication of Loeb & Loeb LLP and is intended to provide information on recent legal developments. This client alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To assure compliance with Treasury Department rules governing tax practice, we inform you that any advice (including in any attachment) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer, and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2012 Loeb & Loeb LLP. All rights reserved.

RICHARD M. LORENZO	RLORENZO@LOEB.COM	212.407.4288
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2263
COREY N. MARTIN	CMARTIN@LOEB.COM	212.407.4841
MICHAEL J. MCISAAC	MMCISAAC@LOEB.COM	212.407.4194
C. CHRISTOPHER MURILLO	CMURILLO@LOEB.COM	212.407.4168
MICHAEL A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122
