



FINANCIAL INSTITUTIONS REGULATORY UPDATE

CFPB Proposes Two-Page Credit Card Agreement

On December 7, 2011, the Consumer Financial Protection Bureau (“CFPB”) announced a new “Know Before You Owe” project. The stated goal of the project is to simplify credit card agreements, to create greater consumer understanding of the prices, risks, and terms of credit cards.

The centerpiece of the new project is a prototype two-page credit card agreement. The short agreement is intended to convey the key terms of a credit card to a consumer. The agreement does not contain all of the contractual details that are typically found in a cardholder agreement today, including some that are required by regulation, and instead refers to a list of standardized definitions that the CFPB has also released.

Creating shorter and simpler agreements has been a stated goal of the CFPB, and has long been associated with Professor Elizabeth Warren, who spearheaded the initial organization of the new Bureau and is now running as a candidate for the U.S. Senate. However, the idea of a short and standardized agreement raises a number of significant questions and concerns. Key questions include whether the use of such an agreement—and reference to a standardized list of definitions—would comply with the Truth-in-Lending Act, contract formation, and other legal requirements. In addition, there are currently significant variations in cardholder agreements from issuer to issuer, and many of these variations reflect differences in underlying policies and how credit card accounts actually work. Reflecting individual practices in a short document and standardized definitions could present substantial difficulties.

Furthermore, a key reason for the length and complexity of credit card agreements is a history of litigation. In response to both actual and threatened litigation, issuers have had to spell out terms in greater and greater detail. Removing that detail could create new litigation exposure, and it does not appear that use of the prototype form or definitions would provide any protection from liability, including with respect to state law claims.

The CFPB has stated that its form is a prototype, not a model form, and that use of the form is not mandatory. They intend to test the prototype with the Pentagon Federal Credit Union. It remains unclear whether, and how, the CFPB will push other issuers to adopt the prototype, or any similar approach that is developed based on any comments or results of testing.

The prototype has not been released for formal comment under the Administrative Procedures Act, but the CFPB has solicited consumer comments through its website. Issuers should consider submitting or discussing their comments to the CFPB as well.

The CFPB’s announcement, together with links to the proposed form and the definitions, can be found at: <http://www.consumerfinance.gov/credit-cards/knowbeforeyouowe/>.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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