Consumer Financial Protection Bureau Proposes Amendments to Final Rule for Prepaid Accounts

On June 15, the Consumer Financial Protection Bureau (CFPB) issued proposed amendments (the Proposal) to its final rule to expand existing consumer protections for electronic fund transfers to prepaid accounts, which was published in the Federal Register on Nov. 22, 2016 and amended on April 25, 2017 (Final Rule). The Proposal would modify the Final Rule to exempt prepaid account issuers from the error resolution and limitation of liability provisions with respect to unregistered cardholders. The Proposal also would provide more flexibility to issuers of digital wallet accounts that are covered by the Final Rule with respect to consumers linking credit card accounts to digital wallet accounts. The Proposal would make other amendments to the Final Rule as noted below.

Comments to the Proposal are due by August 14, 2017. The CFPB has specifically requested comment on whether a further delay of the Final Rule’s effective date would be appropriate in light of the proposed amendments.

**Error Resolution and Limitation of Liability**

The Final Rule extends the error resolution and limitation of liability provisions that currently apply under existing Regulation E to all prepaid accounts, including unregistered accounts. As part of the error resolution procedure, prepaid account issuers will be required to give prepaid account holders a provisional credit if an investigation cannot be completed in 10 business days. The Final Rule contains a carve-out to the provisional credit requirement, however, if an issuer has not completed its customer identification and verification process of a prepaid account holder (other than with respect to payroll and government benefits accounts). Prepaid account issuers said that the provisional credit exception was not enough of a protection and that it would be too difficult to investigate errors that occur before the issuers know the identity of the prepaid account holders. Absent a change, prepaid account issuers have been considering limits on the functionality of prepaid accounts before they are registered.

Under the Proposal, an issuer would not be required to comply with the error resolution or limitation of liability requirements of Regulation E for any prepaid account for which it has not successfully completed its customer identification and verification process. The cases in which an issuer has not completed its customer identification and verification process in the Proposal are the same in all material respects as in the Final

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Rule. For prepaid account programs for which an issuer does not have a customer identification and verification process, in lieu of an error resolution notice in its initial disclosures, the issuer would need to indicate affirmatively that there are no error resolution or limitation on liability protections.

**Linkage of Certain Credit Card Accounts to Digital Wallets**

The Final Rule provides that prepaid accounts with linked credit features offered by the prepaid account issuer, its affiliate or business partner are subject to Regulation Z, including the requirement that an issuer wait 30 days after a prepaid account has been registered before soliciting cardholders for, or opening, a new credit feature or linking an existing credit feature to the prepaid account. The Final Rule defines “business partner” broadly such that it covers credit card issuers with which a digital wallet provider has a cross-marketing agreement. A digital wallet provider expressed concern that the 30-day waiting period would delay a consumer’s ability to link credit card accounts offered by the digital wallet provider’s business partners to the digital wallet account but not credit card accounts offered by other credit card issuers, which would cause consumer confusion and unreasonably harm its business prospects.

Under the Proposal, the definition of business partner would include an exception to address this concern. A person would not be considered a business partner, and thus a prepaid account issuer would not be subject to the 30-day waiting period or other requirements of Regulation Z with respect to a credit card account offered by such person, if the following five conditions are met:

- The credit card account itself is fully subject to Regulation Z and is not linked to another prepaid account (i.e., is not otherwise a hybrid prepaid credit card).
- The prepaid account issuer and the credit card account issuer would be prohibited from allowing any transfers of credit except where either the prepaid account issuer or the credit card account issuer has received from the consumer a written request to authorize such transactions.
- The prepaid account issuer and the credit card account issuer must not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account.
- The prepaid account issuer must apply both of the following:
  - the same terms, conditions or features to the prepaid account when a consumer authorizes linking it to the credit card account as when the consumer does not authorize the linkage
  - the same fees to load funds from a credit card account linked to the prepaid account as it charges for a comparable load on the consumer’s prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate or a person with which the prepaid account issuer has a business partner relationship if not for this exception

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2 An issuer has not completed its identification and verification process if the issuer (i) has not concluded this process, provided the issuer has disclosed to the consumer the risks of not registering the account; (ii) has concluded this process but could not verify the identity of the consumer, provided the issuer has disclosed to the consumer the risks of not registering the account; or (iii) does not have a consumer identification and verification process by which the consumer can register the prepaid account.

3 Other than the exception, the meaning of business partner would be substantially the same as in the Final Rule, taking into account some technical changes by the CFPB that would move text from the official commentary into the text of the regulation.
• The credit card issuer must apply both of the following:
  o the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid account to the credit card account as it applies to the consumer’s credit card account when the consumer does not authorize a linkage
  o the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid account as with the traditional credit card account

Other Amendments

The Proposal contains narrowly drawn amendments to the Final Rule on other topics. These amendments include: (i) a clarification regarding the exclusion of loyalty, award or promotional gift cards from coverage of the Final Rule; (ii) exceptions for delivery of pre-acquisition disclosures when funds are made available exclusively via a prepaid account and when prepaid accounts are acquired in a retail location; (iii) disclosures of an additional fee in the short-form disclosure if an issuer has three or more fee variations for such additional fee other than in the case of multiple service plans; (iv) exceptions to the electronic and oral disclosure requirements when an issuer provides the disclosures in written form prior to acquisition of the prepaid account; (v) relief regarding the timing of submission of amended agreements to the CFPB; and (vi) the manner of providing unsolicited access devices in limited circumstances when funds are made available exclusively via a prepaid account.

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

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