

# The CFPB issues proposed rules on prepaid products

## The CFPB's analysis of virtual currencies is still ongoing

After issuing an advanced notice of proposed rulemaking regarding general purpose reloadable cards in May 2012, the US Consumer Financial Protection Bureau ('CFPB') issued proposed rules on prepaid products in November 2014. CFPB Director Richard Cordray said, "[The proposed rules] would close the loopholes in [the prepaid product] market and ensure prepaid consumers are protected whether they are swiping a card, scanning their smartphone, or sending a payment."<sup>1</sup>

The proposed rules would amend Regulation E under the Electronic Fund Transfer Act and Regulation Z under the Truth in Lending Act. The proposed rules cover prepaid accounts under Regulation E. A prepaid account means a card, code, or other device established primarily for personal, family, or household purposes, and which: (i) is either issued on a prepaid basis to a consumer in a specified amount or (ii) not issued on a prepaid basis but capable of being loaded with funds thereafter, and is: (A) redeemable upon presentation at multiple, unaffiliated merchants for goods or services, (B) usable at automated teller machines or (C) usable for person-to-person transfers (excluding gift certificates, store gift certificates, loyalty, award or promotional gift cards and general use prepaid cards that are both marketed and labelled as gift cards or gift certificates). Examples of these prepaid accounts include general purpose reloadable cards and other types of prepaid products that serve as transaction account substitutes. For example, prepaid accounts cover payroll card accounts that are directly or indirectly established through an employer and to which electronic fund transfers of the employee's compensation are made on a recurring basis, certain types of federal, state, and local government benefit accounts (for example, unemployment insurance, child support and pension payments), student financial aid disbursement cards and tax refund cards. Excluded from the definition of prepaid accounts are health savings accounts, flexible spending accounts, medical savings accounts and health reimbursement arrangements. The CFPB is seeking comment on the specific types of prepaid products that should be included or excluded from coverage.

According to Cordray, "[p]repaid products, however, are more than just cards. As the prepaid card market has grown, so has the use of mobile or electronic prepaid accounts. Products like PayPal or Google Wallet can be loaded with and store funds from the consumer or from third parties, and they also can be used for a wide range of transactions, without reliance on a card."<sup>2</sup> The CFPB anticipates that the proposed rules would apply to certain mobile wallets and recognises that they could apply to virtual currency and related products and services. The CFPB notes that its analysis of (including the application of the proposed rules to) mobile financial products and services and virtual currencies and related products and services is ongoing and that the proposed rules do not specifically resolve these issues.

The CFPB does not intend that a prepaid account include a product that can never store funds. If a digital wallet stores payment credentials versus storing the funds themselves, the wallet would not be considered a prepaid account unless the wallet allows a consumer to store funds in it directly and the other criteria of the prepaid account definition are satisfied.

The proposed rules contain comprehensive consumer protections for prepaid products, which are among the fastest growing types of payment instruments in the US. The total dollar value loaded onto general purpose reloadable cards is expected to continue to grow to nearly \$100 billion through 2014<sup>3</sup>. Also, according to the CFPB, the use of general purpose reloadable prepaid products not linked to a physical card or device to store and transfer funds via the internet, text or mobile phone application is growing. Among other things, the proposed rules provide for the following protections for prepaid accounts. First, short form and required long form disclosures would be available to consumers before a consumer agrees to acquire a prepaid account. The short form would highlight key fees and terms and the long form would set forth all of the prepaid account's fees and the conditions under which those fees could be imposed<sup>4</sup>. Second, periodic statements would be provided or account information made available to the consumer in an alternative manner. Third, there would be error resolution and limited liability provisions specific to prepaid accounts. Fourth, prepaid account issuers would provide the CFPB with terms and conditions for prepaid accounts that would be posted on a website maintained by the CFPB and issuers would post the terms and conditions on their own websites or make them available upon request. Fifth, there would be provisions regarding overdraft services and other credit features offered in connection with prepaid accounts.

Comments on the proposals must be received on or before 90 days after the proposals are published in the Federal Register<sup>5</sup>.

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- <http://www.consumerfinance.gov/newsroom/cfpb-proposes-strong-federal-protections-for-prepaid-products/>
- <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-prepaid-products-field-hearing/>
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