

Client Alert

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CFPB Proposes Suspending Quarterly Credit Card Agreement Submission Requirements

By Obrea Poindexter, Jeremy Mandell, and Amanda Mollo

On February 26, 2015, the Consumer Financial Protection Bureau (“CFPB”) published a proposed rule (“Proposed Rule”) that would suspend for one year the requirement that credit card issuers submit their agreements to the CFPB on a quarterly basis, as required by the Truth in Lending Act, as amended by the Credit Card Accountability Responsibility and Disclosure Act (“CARD Act”) and implemented by Regulation Z.¹ During that time, the CFPB says it will work to develop a new electronic submission system that would make submitting credit card agreements less burdensome for issuers in the future. Comments on the CFPB’s proposal are due by March 13, 2015.

CURRENT CARD ACT POSTING REQUIREMENT

Regulation Z requires that credit card issuers submit agreements to the CFPB each quarter so that the CFPB can add the agreements to its online repository.² The repository currently contains agreements from close to 450 card issuers. Separately, Regulation Z also requires issuers to post agreements on their own Web sites in a prominent location.³

The current manual electronic submission system involves issuers sending their agreements to the CFPB via e-mail. CFPB staff subsequently—and sometimes with significant delays—upload the agreements to the repository. The CFPB acknowledges that this process creates an unnecessary burden on issuers (and, perhaps, on CFPB staff?) that could be streamlined through implementation of a more efficient system. The CFPB also acknowledged that the manual system may make issuers’ own internal tracking of previously submitted agreements difficult.

PROPOSED SUSPENSION

Under the Proposed Rule, issuers would still be required to post their agreements on their own Web sites; however, they would not be required to submit any credit card agreements to the CFPB for the next four quarters. That is, the next required submission would be the first business day on or after April 30, 2016.

The CFPB notes that, pursuant to the Dodd-Frank Act, it considered the potential benefits and costs of the Proposed Rule, concluding that it “is not aware of any significant costs to consumers that might arise from the temporary suspension of the quarterly submission requirement and the absence of these agreements on the

¹ 80 Fed. Reg. 10,417 (Feb. 26, 2015).

² 12 C.F.R. § 1026.58(c).

³ *Id.* § 1026.58(d).

Client Alert

[CFPB]'s Web site.”⁴ The CFPB's conclusion suggests that the quarterly posting requirement does not have a clear consumer benefit.

In the supplementary information accompanying the Proposed Rule, however, the CFPB stated its view that the availability of credit card agreements in the CFPB's repository benefits consumers for the following reasons:

- The repository enables consumers who may have misplaced their own credit card agreements to find their agreement;
- The repository enables consumers to research different credit products; and
- The repository allows issuers to research the terms their competitors use and, thus, make their own credit products more attractive to consumers in hopes of attracting more business.

During the suspension period, the CFPB intends to compile agreements from the Web sites of certain large issuers midway through the suspension period in order to provide agreement terms “to the overwhelming majority of credit card consumers in the U.S.”⁵

The CFPB also proposes to develop a new “streamlined and automated” electronic submission system that will enable issuers to upload agreements directly to the CFPB's repository. The CFPB expects to issue technical specifications addressing the form and manner for submission of agreements prior to the end of the suspension period.

IMPACT ON PREPAID ACCOUNTS PROPOSAL

The CFPB's prepaid proposal⁶ would require prepaid issuers to submit prepaid agreements to the CFPB on a quarterly basis in a manner that is very similar to the Regulation Z requirement. The CFPB indicated that it “intends for [a] streamlined electronic submission process to be operational before [the prepaid account agreement posting requirement] becomes effective.”⁷ It seems, therefore, that prepaid issuers could be able to utilize the new “streamlined and automated” electronic submission system; however, the prepaid proposal is not clear on this point.

However, in light of the fact that the CFPB has just stated that suspending the requirement for an entire year will have little, if any, cost to consumers, which suggests the benefits of the requirement are relatively meager, the CFPB should seriously consider the advisability of perpetuating the CARD Act quarterly submission requirement in the prepaid space.

We will continue to follow developments related to agreement posting requirements in both the credit card and prepaid card spaces.

⁴ 80 Fed. Reg. at 10,420.

⁵ *Id.* at 10,418.

⁶ 79 Fed. Reg. 77,102 (Dec. 23, 2014).

⁷ *Id.* at 77,196.

Client Alert

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If you have questions or wish to discuss the Proposed Rule, please contact Rick Fischer at (202) 887-1566 and rfischer@mofo.com; Obrea Poindexter at (202) 887-8741 and opoindexter@mofo.com; or Jeremy Mandell at (202) 887-1505 and jmandell@mofo.com.

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