

CFPB Warns Government Benefits Distributors About Compulsory Use of Prepaid Cards

February 18, 2022

On February 15, 2022, the Consumer Financial Protection Bureau (CFPB) issued a [compliance bulletin](#) indicating that it will be scrutinizing prepaid card providers who distribute government benefits and payments. Specifically, the CFPB bulletin highlighted the regulatory requirement for consumer choice and forthcoming scrutiny of exclusive contracting and fees, and underscored the CFPB's authority under the Electronic Fund Transfer Act (EFTA) and the Consumer Financial Protection Act (CFPA) – which codifies the CFPB's unfair, deceptive, and abusive acts or practices (UDAAP) authority – to take action against those who attempt to limit this choice.

The EFTA and government benefit accounts

The EFTA and its implementing regulations (Regulation E) establish compliance requirements for financial institutions engaged in electronic fund transfers. The EFTA and Regulation E contain provisions related to, among other things, card and account consumer disclosures, error and dispute resolution processes, and preauthorized transfer requirements. Additionally, the EFTA and Regulation E prevent government benefit administrators from requiring that a consumer establish an account at a particular financial institution as a condition of receipt of a government benefit, known as the “compulsory use prohibition.” Government benefit accounts are defined as accounts “established by a [state or federal] government agency for distributing government benefits to a consumer electronically,” excluding distributions for needs-tested benefit programs such as the Supplemental Nutrition Assistance Program.¹

The bulletin explains that the compulsory use prohibition requires that consumers receiving government benefits “have a choice with respect to how they receive their funds.”² As a result, a consumer must have at least two options for receipt of funds, starting with the first payout of the government benefits. The bulletin clarifies that the compulsory use prohibition does not require a government agency, financial institution, or other participating person or entity to offer two different methods for receiving the funds. For example, according to the CFPB, it is permissible to require consumers to use direct deposit, as long as the consumers can choose the financial institution at which they would like to receive the direct deposit.³ Alternatively, a government benefits program may require use of a particular financial institution for direct deposit, but allow consumers to select another means by which to receive the funds. Further, Regulation E requires that the disclosures provided before the consumer acquires a government benefit account include a statement of the available payment options.

Additional Regulation E requirements

The bulletin also highlights several key Regulation E prohibitions and requirements that apply to financial institutions providing government benefit accounts, as outlined below.⁴

Disclosures

Institutions must provide three different types of disclosures for government benefit accounts –pre-acquisition disclosures, disclosures on the access device itself (e.g., the card) and initial disclosures – which must contain certain information related to the government benefit account and its protections for the consumer. Such information includes the name of the financial institution that holds the account or issues the access device, applicable fees related to the account or access device, the consumer’s liability for unauthorized transfers, an error resolution notice, and limitations on transfer frequency.

Change-in-terms notices

Institutions are required to notify consumers whenever there is a change in the terms or conditions required to be provided in the initial disclosures for government benefit account, or a change results in an increased fee or liability for the consumer or limitations in the availability, frequency, or dollar amount of electronic fund transfers.

Access to account history

Institutions are required to provide either a periodic statement to consumers showing the account transaction history or otherwise make available to the consumer certain items, such as the consumer’s account balance by telephone, electronic history through a website and written transaction histories, upon request.

Limited liability for unauthorized transfers and error resolution rights

The bulletin reiterates that limited liability protections and error resolution rights fully apply to government benefit accounts, with limited modifications regarding the period within which an unauthorized transfer must be reported by the consumer to the financial institution.

CFPB monitoring and enforcement – don’t forget UDAAP

Notably, in its closing comments, the bulletin makes passing reference to the fact that the CFPB will rely on its enforcement authority under the CFPA to rein in those in its crosshairs, highlighting not just the CFPB’s power to enforce the EFTA against providers of government benefits accounts, but also its ability to more broadly interpret gray areas of potential concern. Indeed, as the CFPB’s [press release](#) noted, the CFPB’s recent enforcement action [penalizing a prepaid card provider for imposing fees to access benefits](#) was based on alleged violations of the EFTA and UDAAP. The provider issued prepaid cards to recently incarcerated individuals to access certain post-release benefits. Given the recent CFPB scrutiny in this space, providers of government benefits on prepaid cards should be aware of the importance of strict compliance with the EFTA and potential UDAAP concerns.

Notes

1. See 12 CFR § 1005.15(a)(2).
2. See CFPB Bulletin 2022-02: Compliance Bulletin on the Electronic Fund Transfer Act, p. 6.
3. *Id.*
4. See CFPB Bulletin 2022-02: Compliance Bulletin on the Electronic Fund Transfer Act, p. 7-9.

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Key Contacts

Jasmine A. Banks Washington, DC	jbanks@cooley.com +1 202 360 6565
Michelle L. Rogers Washington, DC	mrogers@cooley.com +1 202 776 2227
Obrea Poindexter Washington, DC	opoindexter@cooley.com +1 202 776 2997
Sean Ruff Washington, DC	sruff@cooley.com +1 202 776 2999

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