

To the Point!

legal, operations, and strategy briefs for financial institutions

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Garnishment of Accounts Containing Federal Benefit Payments

The OCC has issued a booklet titled Garnishment of Accounts Containing Federal Benefit Payments (the “Booklet”) providing guidance and examination procedures related to the interagency rule that became effective on June 28, 2013 (as reported in our July 2, 2013 To the Point). The Booklet describes the requirements of the interagency rule that apply when a financial institution receives a garnishment order against an account holder who receives any of the following benefit payments by direct deposit: social security benefits; supplemental social security benefits; veterans benefits; federal railroad retirement, unemployment and sickness benefits; civil service retirement system benefits; and federal employee retirement system

benefits. The rule protects from garnishment up to two-months of benefit payments and prohibits financial institutions from charging garnishment fees against this protected amount. We encourage all financial institutions to ensure that their policies and procedures comply with the new rule, and we encourage those regulated by the OCC to become familiar with the guidance and examination procedures.



Coming Up – Prepaid Card Fee Disclosures

The CFPB is finalizing its initiative on prepaid cards that began in 2012, is currently testing two model disclosures and plans to issue a proposed rule “this spring” establishing a uniform disclosure for prepaid card fees to assist consumers in making a side-by-side comparison of the costs of different prepaid products. The fees contained in the model disclosures include, among others, monthly maintenance fees, reload fees, per-purchase fees, ATM withdrawal fees, balance inquiry fees and inactivity fees. The model disclosures being used in testing are available for review on the CFPB’s blog and the CFPB is requesting comments on the alternative designs.

The PEW Charitable Trust is also studying prepaid cards and published its latest report in February 2014, *The Need for Improved Disclosures for General Purpose Reloadable Prepaid Cards*. The report finds that the primary motivation of customers who use prepaid cards is to gain control of their finances, including avoiding credit card debt and overdraft fees. The report contains the following recommendations regarding the terms and conditions of prepaid cards:

- Prepaid cards should not have overdraft or other automated or linked credit features.
- Prepaid cardholders should be protected against liability for unauthorized transactions that occur either when a card is lost or stolen or a charge is incorrectly applied.
- Prepaid cardholders should have access to account information and transaction history.
- Prepaid cards should be required to provide information about terms, conditions, and fees in a uniform, concise, and easy-to-read format. This information should be included with the card packaging so that it is accessible pre-purchase at retail outlets as well as online.
- Prepaid card funds should be federally insured against loss caused by the failure of an institution.
- Pre-dispute binding arbitration clauses in cardholder agreements, which prevent cardholders from having the choice to challenge unfair and deceptive practices or other legal violations in court, should be prohibited.

The study includes a model disclosure that is more comprehensive than those proposed by the CFPB and that requires disclosure of *all* possible fees that may be charged for use of the prepaid card and includes in addition to fees, the disclosure of the deposit-hold policy and dispute resolution procedures. Financial institutions should become familiar with the PEW recommendations as they may indicate the direction of future regulation. Financial institutions should also review the CFPB's model forms and consider providing a comment to the CFPB on its model disclosures.



CFPB 2013 Consumer Response Annual Report

The CFPB recently issued its 2013 Consumer Response Annual Report (the "Report"), which shows an 80% increase in the number of complaints over 2012, the first full year of reporting. Mortgage-related complaints (37%), debt collection complaints (19%) and credit reporting complaints (15%) top the list. Although debt collection complaints were not accepted by the CFPB until July 2013, currently they are the second largest category of complaints. The CFPB also accepts complaints regarding credit cards, bank accounts and services, private student loans, vehicle and other consumer loans, money transfers and debt collection.

The Report further analyzes the complaint data by summarizing the types of complaints within each category. In addition, the consumer report data used to develop the Report is available to the public for its review and analysis. The Report identifies the most common type of complaint within each category: for mortgages, problems consumers face when they are unable to pay mortgages; for debt collection, continued attempts to collect a debt that is not owed (debt discharged in bankruptcy, debt resulted from identity theft, debt was paid, debt not consumer's); and for credit reporting, incorrect information on credit report.

The CFPB has stated that it will use the consumer complaint data to guide its future supervisory activities. We recommend that financial institutions become familiar with the Report and the CFPB's consumer complaint data, and use the information to ensure their training, policies and procedures provide clear guidance to their employees on how they should address these complaints.

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