

Client Alert.

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CFPB Releases Prototype Credit Card Agreement

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On December 7, 2011, the Consumer Financial Protection Bureau (“CFPB”) released a two-page draft of what it described as a “prototype” credit card agreement in connection with its “Know Before You Owe” campaign. Simplifying credit card agreements is a policy initiative the CFPB describes as a priority. Over the past year, CFPB officials have met with consumer groups and some industry representatives to create the prototype agreement, and they are expected to continue to do so. The CFPB requests comment on the draft agreement and indicates that, over the next few months, the CFPB will work to improve the two-page agreement with feedback from consumers and the industry.

While use of the agreement by credit card issuers would be optional at this point, the agreement is intended to ensure that consumers understand the pricing, risks, and terms of the credit card. In particular, the CFPB states that the agreement is aimed at making it easier for consumers to comparison shop. The agreement, however, raises significant Truth-in-Lending compliance issues and potential exposure issues for issuers in private litigation.

The two-page agreement provides three basic sections, in a tabular format, entitled (1) Costs, (2) Changes, and (3) Additional Information.

- *Costs.* The Costs section of the agreement includes information about interest rates and specific fees associated with the account, including penalty fees, activity fees, replacement card fees, and rush card fees. In addition, the Costs section includes information on the timing of payments, the consequences of paying late, and how interest will be calculated (*i.e.*, balance computation and applicable grace period information).
- *Changes.* The Changes section provides the consumer with a generic set of possible changes the issuer can make to the agreement and describes some of the limitations that can apply to such changes.
- *Additional Information.* The Additional Information section includes information about the rights of the issuer, such as the right to collect reasonable attorney’s fees, and cardholder rights, such as the right to dispute charges.

Notably, the prototype agreement is generic in many respects, and omits detail about fundamental aspects of the credit card relationship. The agreement also omits definitions of key terms, instead opting to incorporate the definition of specific underlined terms by reference to a glossary. The consumer may access the glossary on either the CFPB website or the issuer’s website, or by requesting a printed copy by phone.

The public is invited to comment on the draft agreement through the CFPB’s website. In addition, the CFPB is planning to pilot the draft agreement with cardholders of the Pentagon Federal Credit Union.

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We are in the process of reviewing the draft agreement; an analysis of the agreement is forthcoming. Below are links to the CFPB's press release and to the credit card agreement.

PRESS RELEASE

<http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-aims-to-simplify-credit-card-agreements/>

CREDIT CARD AGREEMENT

http://www.consumerfinance.gov/assets/CFPB_card_agreement.pdf

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