

Client Alert

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CFPB Initiates Third CARD Act Review

By Rick Fischer, Obrea O. Poindexter, and Jeremy R. Mandell

On March 10, 2017, the Consumer Financial Protection Bureau (CFPB or Bureau) published a [Request for Information](#) (2017 RFI) regarding the consumer credit card market. In accordance with Section 502(a) of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Bureau conducts a biennial review of the consumer credit card market by soliciting public comment and feedback. The CFPB conducted its previous review in 2015, through its [March 2015 RFI](#) and the resulting [2015 CARD Act Report](#).

The CFPB uses these RFIs to gather feedback from participants in the consumer credit card market, including consumers, credit card issuers, and consumer advocates. The 2017 RFI requests comment on specific topics required by the CARD Act, as well as other areas of interest to the CFPB. The CFPB also encourages commenters to address other issues related to the consumer credit card market they believe are worthy of the CFPB's attention.

Discussion of the following topics is required by the CARD Act:

- The terms of credit card agreements and the practices of credit card issuers;
- The effectiveness of disclosure of terms, fees, and other aspects of credit card plans;
- The adequacy of protections against unfair or deceptive acts or practices, or unlawful discrimination in connection with credit card plans; and
- How the following have changed since the 2015 CARD Act Report:
 - The cost and availability of credit, including availability for nonprime borrowers;
 - The use of risk-based pricing; and
 - Credit card product innovation.

The other areas of interest to the CFPB identified in the 2017 RFI are:

- *Deferred-interest products*: The CFPB seeks feedback regarding the evolution of market trends and issuer practices with respect to deferred-interest products since the 2015 CARD Act Report. The Bureau acknowledges the popularity of these products with consumers—and the Bureau acknowledged in the 2015 CARD Act Report the high consumer success rate (more than 80 percent!) with these products—but the Bureau requests information on what risks still exist for consumers and what strategies, if any, should be implemented to mitigate those risks.
- *Subprime specialist products*: Another remaining area of risk highlighted in the 2015 CARD Act Report was subprime specialist products. Specifically, the Bureau found that “[s]ubprime specialist credit card issuers offer products significantly more expensive than their mass market counterparts.” In the 2017 RFI, the Bureau is seeking information on how the experiences of consumers using subprime specialist products differ from

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the experiences of consumers with similar credit profiles when they use mass-market credit cards.

- *Third-party comparison sites:* The Bureau has identified third-party comparison sites as an area of interest because, according to the Bureau, “in many cases contracts between sites and [card] issuers can influence or explicitly determine which (and how) products and choices are presented to consumers.” The CFPB wants to use the 2017 RFI to determine whether consumers understand the benefits and risks of using such sites.
- *Innovation:* The Bureau is interested in determining the progress of two major trends in financial innovation: (1) payment security evolution, including the widespread adoption of EMV standards and mobile payments; and (2) new consumer lending models that potentially compete with credit cards, both indirectly by being marketed for debt consolidation and directly at the point of sale. The CFPB would like to determine how these trends have developed since the agency’s 2015 CARD Act Report, which of these trends is likely to have the greatest impact on the credit card market in the future, and what other innovations might evolve in the near future.
- *Secured credit cards:* The CFPB also seeks to assess the current state of the secured credit card market, and examine the potential of these products to provide access to credit for subprime consumers, and a means to build a positive credit history for consumers with limited or damaged credit history.
- *Online and mobile account servicing:* The Bureau wants to determine the potential benefits and risks posed by the broader shift to digital account servicing. In particular, the CFPB seeks information regarding awareness of mandatory credit card disclosures by consumers who do not receive paper statements and rarely access their statement online. The Bureau’s RFI recognizes that regulation has failed to keep pace with consumer demand for a digital-only customer experience.
- *Rewards products:* The Bureau seeks feedback regarding the evolution of market trends and issuer practices since the agency’s 2015 review of rewards products. The CFPB has particular concern about the impact that rewards products can have on consumer choice and usage of credit cards.
- *Variable interest rates:* The CFPB seeks input regarding the degree to which consumers are aware that increases in prime and other commercial interest rates will result in increases to their credit card borrowing costs on funds already borrowed. Also, the Bureau would like to know what common practices issuers use to inform consumers of such rate increases.
- *Debt collection:* The CFPB requests information on what, if any, changes have been made to the policies and practices of consumer credit card collections and debt sales operations since the agency’s 2015 review, and what factors have driven those changes.

Comments on the 2017 RFI are due by June 8, 2017.

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