



## Vendor and Third Party Management CFPB Study on Prepaid Cards: What You Need to Know

---

Sponsored by Hiperos, LLC



---

By **Linda Tuck Chapman**  
ONTALA Performance Solutions Ltd.

A comprehensive study of the features and consumer protections currently provided by the Account Agreements for Prepaid Cards was published in November 2014 by the Consumer Financial Protection Bureau (CFPB). Their findings are expected to formalize rules and requirements governing these financial instruments.

A copy of the report can be found at [http://files.consumerfinance.gov/f/201411\\_cfpb\\_study-of-prepaid-account-agreements.pdf](http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf)

### What's in Scope?

Prepaid Cards include general purpose programs; cards marketed for specific purposes such as travel or receipt of tax refunds; cards for specific users such as teenagers and seniors; payroll cards; cards for distribution of certain government benefits; and programs specifically designed for person-to-person transfers. The majority of these cards are issued by MasterCard, Visa, and NerdWallets.

All of these Prepaid Cards are covered by proposed rules governing prepaid accounts in the Regulation E (Electronic Fund Transfer Act) and Regulation Z (Truth in Lending Act).

Some Prepaid Cards are excluded from CFPB oversight. These include gift, incentive and rebate programs; health and flexible spending accounts; and needs-tested State or local electronic benefit transfer (EBT) card programs.



## What's the Problem?

While Payroll and Government Benefits cards were found to be substantially compliant, most Prepaid Card Agreements are not in full compliance with Reg E and Reg Z. Gaps were found in the following areas:

- 1) General disclosure of fee information
- 2) Error resolution and provisional credit
- 3) Limited liability protections
- 4) Access to account information
- 5) Overdraft services and negative balance fees and
- 6) FDIC or NCUSIF pass-through deposit or share insurance

## What Action Should You Take?

CFPB regulated banks – those with assets of \$10 billion or more – should immediately review their programs to determine if:

- 1) They offer any in-scope Prepaid Cards
- 2) All Prepaid Cards Agreements and programs are in full compliance with Regulation E and Regulation Z
- 3) Any of their Prepaid Cards are issued, managed by a third party program manager or have outsourced customer support

If Prepaid cards are issued, managed and administrated by the bank, including all customer support activities, they are excluded from your Third Party Management program. They are not excluded from CFPB oversight.

## Best Practices in Third Party Management

### Step #1: Identify

All Third Party Management programs should include a Preliminary Risk Assessment process for all new, amending and renewing relationships. This step identifies where risk is present – in this case CFPB non-compliance risk - and is intended to identify 100% of relationships that must be included in your Third Party Risk Management program.



All CFPB and OCC regulated entities must ensure their Third Party Management program encompasses vendors and non-vendor third parties. In the case of third party issuers or managers of Prepaid Cards, a “vendors-only” program has a high probability of overlooking these relationships as the relationship with the third party may be on a revenue-sharing or sales commission basis.

### **Step #2: Assess**

Regardless of whether your Prepaid Card program(s) is internal or issued / managed by a third party, ensure Legal and Compliance review the Account Agreement(s) to ensure it is in full compliance with Reg E and Reg W.

Document activities undertaken to review Prepaid Card Agreements, assess compliance, define and negotiate any new requirements, track progress and record resolution.

### **Step #3: Control**

If any aspect of your Prepaid Card program(s) is managed by a third party, it's important that your contract describes Reg E and Reg W requirements, and the third party's responsibility to comply with CFPB requirements including the process and specific notification period to advise the bank of customer complaints.

If the third party is responsible for customer support, your contract should describe their responsibilities to train their employees, maintain accessible customer records, periodically test for compliance including seeking approval from the bank for standard responses to customer enquiries, sampling customer calls, and annual formal acknowledgement that they are complying with your Code of Conduct.

### **Step #4: Manage**

The line of business responsible for the Prepaid Card program(s) owns the risk and therefore owns the responsibility for managing in-scope third parties. Management responsibilities include staying current with applicable regulations, ensuring Account Agreements are approved by Legal and Compliance, ensuring contractual terms with third parties describe requirements, periodically reviewing scripts, and standard correspondence and testing a reasonable sample of contact center calls.



## Conclusion

Review the CFPB Guidance for more detailed information. Renegotiate your service provider agreements or switch. According to CFPB practices, your institution will be held 100% accountable for any fines levied for failure to comply with CFPB requirements. There is no financial recourse that you can take against your service provider. Collaborate through industry associations and events to ensure service providers are meeting regulatory requirements, this will turn up the heat to get any gaps closed.

---

**Linda Tuck Chapman**, CPO Emeritus & President Ontala Performance Solutions Ltd. is a recognized expert in third party management, outsourcing governance and procurement transformation in the financial services sector.

[lindatuckchapman@ontala.com](mailto:lindatuckchapman@ontala.com)

416.452.4635

---