ABA PREPAID ROUNDTABLE: Navigating prepaid's compliance challenges

Simple plastic cards carry many regulatory implications
By Steve Cocheo, executive editor and digital content manager
Very little in banking compliance is simple in the details these days, but Rob Rowe told bankers at the ABA Prepaid Roundtable that a good guiding light to getting it right is simple: "Good compliance is good customer service."
Rowe, vice-president and senior counsel in ABA's Center for Regulatory Compliance, said that the relatively shor history of prepaid cards has seen an evolving viewpoint from regulators. The agencies in the Federal Financial Institutions Examination Council view prepaid cards as an access device, rather than as the front part of an account.
More from ABA meeting This article is based on an ABA forum on prepaid card services held in February 2012 in conjunction with the National
Conference for Community Bankers. A companion article, concerning prepaid debit cards' potential, can be viewed here.
There's been a push and pull between the agencies and the industry on this point.
&IdquoWe've gotten regulators to stop using the term &Isquostored value'," noted Rowe. This goes back to the 1990s, when the term &Idquostored value" was literal, and referred to a chip-on-a-card model where the value existed on the card.

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Now the card is the link to systems that maintain the value the prepaid card holder owns. So, the card is the device, the account holds the value, said Rowe.
Rules vary by type of prepaid card
A wrinkle about prepaid cards is that they are not all created alike.
&IdquoWhat the card is will drive your compliance duties," said Rowe. Payroll cards, electronic benefit cards, rebate cards, and other variations are each subject to different sets of rules. Electronic benefit cards, for example, cannot be subject to consumer-level fees, according to Rowe.
Another wrinkle is that some customer segments for which prepaid cards may be useful are subject to special attention in Washington. For example, FDIC and Congress both have strong interest in the unbanked and the underbanked, and many institutions have viewed prepaid cards as a way that can make serving these segments practical.
Related article: How to reach the unbanked
Overlaying specific card variations are broader issues, some of them still being fleshed out, according to Rowe. One example is how regulators, including the Consumer Financial Protection Bureau, will view card program features, promotion, and pricing under UDAAP (Unfair, Deceptive, and Abusive Acts and Practices).
Deposit insurance coverage is also an issue to be considered, with prepaid cards sometimes explicitly covered at the consumer level, sometimes not. (Subsequent to the ABA event, FDIC's Committee on Economic Inclusion met to discuss the unbanked, and prepaid card issues were among matters covered. Among meeting documents available online is a chart comparing deposit insurance coverage and other consumer protection features of various types of banking cards.)

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How the Bank Secrecy Act and anti-money-laundering rules apply to prepaid cards also varies according to several factors, including the maximum deposit that can be carried on a card. FinCEN, the Financial Crimes Enforcement Network, issued a final rule in July 2011 dealing with prepaid cards in the context of money service businesses. This narrow focus could expand.

" Prepaid is very much on the radar screen of law enforcement, " said Rowe. " ABA is trying to educate law enforcement that these cards are not the nefarious things they think they are. "

Rowe cautioned that even when a bank goes with a third-party provider's prepaid program, that doesn't let bank staff off the hook on compliance. "Third-party risk" remains on the table.

" 'Turnkey' is a great idea," said Rowe. "But 'turnkey' isn't the same as 'turn over'." Examiners don't expect a bank to not have a third-party vendor relationship for their program, Rowe said, but they do expect the bank to stay on top of it.

Coming attractions

None of this is likely the end of the story. As Rowe noted, the Consumer Financial Protection Bureau is known to have prepaid cards on its agenda.

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