

FinCEN Prepaid Access Rules

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Agenda

- Overview of the Prepaid Access Rule
- Discussion topics
 - Marketplaces
 - FinCEN FAQs
 - Upcoming NPRM
- Other topics?

Scope of Prepaid Access Rule

- Prepaid Access
- Prepaid Programs
- Providers of Prepaid Access
- Sellers of Prepaid Access
- Regulatory Requirements

Prepaid Access

- "Access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future..."
- FAQ #13: Are devices sold for future access to products or services (e.g., songs, iTunes, telephone minutes, megabytes, wireless top-up, games, software, etc.) prepaid access under a prepaid program subject to the Rule? A: "Likely"
- Risk: software codes and non-currency denominated prepaid access

Prepaid Programs

Covered Programs

- Closed loop > \$2k
- Open loop > \$1k
- International open loop
- Person to person open loop
- Non-depository reloadable open loop

Exempted Programs

- Closed loop \leq \$2k
- Open loop \leq \$1k with no international, P-P or loads from non-depository sources

Closed Loop

- "Used only for goods or services in transactions involving a defined merchant or location (or set of locations)"
- Cash-back requirements

Open Loop

- International Transactions – transmission of funds or the value of funds internationally (Internet, in person, or otherwise)
- Person to Person – transfers of value between holders of prepaid access in a prepaid program
- Non-Depository Reloads – retail store transactions, wire transfers from MSBs, checks payable to someone other than provider

Provider of Prepaid Access

- Participant in a prepaid program
 - By agreement – a single participant in the program is chosen as the provider
 - Without agreement – the provider is the party with principal oversight and control over the prepaid program
 - Organizing program
 - Setting terms and conditions
 - Determining other participants
 - Directing initiation, freeze or termination of prepaid access
- Bank participation

Seller of Prepaid Access

- Receives funds in exchange for initial or subsequent loading of prepaid access, and
 - Sells prepaid access offered under a prepaid program that can be used prior to verification of customer identification; or
 - Sells prepaid access (including exempted prepaid access) > \$10,000 per person, per day without policies and procedures

Seller of Prepaid Access Cont.

- Bulk business to business sales excluded from \$10,000 limit if buyer is not end user (FAQ #5)
- Policies and Procedures
 - Risk-based for particular retailer
 - Typical customers
 - Locations
 - Volume of prepaid access sales

Regulatory Requirements

- Provider
 - Develop AML policy
 - Implement customer identification procedures
 - Implement transaction record keeping
 - Register provider as MSB
 - Report suspicious activity
- Seller
 - Develop AML policy
 - Implement customer identification procedures
 - Implement transaction record keeping (coordinate w/ provider)
 - Report suspicious activity

Marketplaces

- Prepaid access issued by marketplace that enables purchases from multiple merchants at one online location
- Analogous to mall gift cards?
- Considerations:
 - Storefront look and feel
 - Redemption mechanics
 - Redeemable for goods and services only, or cash?
 - Commercial agreements with third party merchants
 - Marketplace accountability to consumers
- State money transmitter laws

Noteworthy Guidance from FAQs (11/2/2011)

- FAQ #13: Devices for future access to goods and services are prepaid access
- FAQ #4: Selling \$10,000 to a person in a day does not per se mean policies and procedures not reasonably adapted
- FAQ #5: Bulk sales excluded from \$10,000 limit
- FAQ #14: Reloads through retail store transactions (cash, check or credit) are non-depository
- URL to FAQs:
http://www.fincen.gov/news_room/nr/html/20111102.html

Notice of Proposed Rulemaking – Physical Transport of Prepaid Access

- Proposed rule conforms reporting requirements for transportation of monetary instruments outside of the U.S. to include prepaid access in excess of \$10,000
- Includes closed loop
- Request for comments by 12/16/2011

Questions?

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