

October 5, 2016

Executive Summary of the Prepaid Rule

On October 5, 2016, the Consumer Financial Protection Bureau (Bureau) issued a final rule (Prepaid Rule) amending Regulations E and Z to create comprehensive consumer protections for prepaid financial products. The Prepaid Rule's key provisions are summarized below. The key changes for payroll card accounts and government benefit accounts are highlighted in separate tables, Prepaid Rule's Key Changes for Payroll Card Accounts and Prepaid Rule's Key Changes for Government Benefit Accounts, available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid>. This executive summary and the tables provide high-level summaries of the Prepaid Rule, but are not substitutes for it. The Prepaid Rule, available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/prepaid-accounts-under-electronic-fund-transfer-act-regulation-e-and-truth-lending-act-regulation-z/>, is the definitive source regarding its requirements.

Prepaid Accounts

The Prepaid Rule adds the term “prepaid account” to the definition of “account” in Regulation E. Accounts that meet the Prepaid Rule's definition of prepaid account are subject to various requirements under amended Regulation E. Payroll card accounts and government benefit accounts are prepaid accounts under the Prepaid Rule's definition. Additionally, a prepaid account includes a product that is *either* of the following, unless a specific exclusion in the Prepaid Rule applies:

- An account that is marketed or labeled as “prepaid” and is redeemable upon presentation at multiple, unaffiliated merchants for goods and services or usable at automated teller machines (ATMs); or
- An account that meets *all* of the following:

- (1) Is issued on a prepaid basis in a specified amount or is capable of being loaded with funds after issuance;
- (2) Whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, to conduct transactions at ATMs, or to conduct person-to-person (P2P) transfers; and
- (3) Is not a checking account, a share draft account, or a negotiable order of withdrawal (NOW) account.

However, an account that satisfies one or both of these tests is *not* a prepaid account if it is *any* of the following:

- An account loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;
- An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments;
- A gift certificate;
- A store gift card;
- A loyalty, award, or promotional gift card;
- A general-use prepaid card that is both marketed and labeled as a gift card or gift certificate; or
- An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

Additionally, the P2P functionality of an account established by or through the U.S. government is not a prepaid account if the account's primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities.

Under the existing definition of account in Regulation E, an account is subject to Regulation E if it is established primarily for a personal, household, or family purpose. Therefore, an account established for a commercial purpose is not a prepaid account. Also, under the existing definition in Regulation E, an account held under a bona fide trust agreement is not an account subject to Regulation E. Therefore, an account held under a bona fide trust agreement is not a prepaid account.

It is important to note that the definition of prepaid account is not limited to general purpose reloadable cards or prepaid products that otherwise function as transaction account substitutes.

Applicability of Regulation E and Regulation Z to Prepaid Accounts

Pursuant to the Prepaid Rule, prepaid accounts are covered accounts under Regulation E. Generally, the requirements set forth in Subpart A of Regulation E apply to prepaid accounts. However, in certain circumstances, the Prepaid Rule contains additional or different requirements for prepaid accounts. It modifies general Regulation E requirements to create tailored provisions governing disclosures, limited liability and error resolution, and periodic statements. It also adds new requirements regarding the internet posting and submission to the Bureau of prepaid account agreements.

Additionally, the Prepaid Rule addresses overdraft credit features that may be offered in conjunction with prepaid accounts. Subject to certain exceptions, such credit features are covered under Regulation Z if the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, and credit can be accessed in the course of a transaction conducted with a prepaid card.

Pre-Acquisition Disclosures

The Prepaid Rule contains pre-acquisition disclosure requirements for prepaid accounts. Generally, a financial institution, as defined in Regulation E,¹ must provide a consumer with the following before the consumer acquires the prepaid account:

- A short form disclosure;
- Certain information disclosed in close proximity to the short form disclosure; and
- A long form disclosure.

¹ For purposes of Regulation E, a financial institution includes any person that directly or indirectly holds an account belonging to a consumer or that issues an access device and agrees with a consumer to provide electronic fund transfer services, unless the person is excluded from coverage by section 1029 of the Dodd-Frank Act. For government benefit accounts, a government agency is a financial institution if it directly or indirectly issues an access device for initiating electronic fund transfers from the government benefit account.

The short form disclosure sets forth certain key fees and other information about the prepaid account, and must be in a specific format. The Prepaid Rule includes several model forms for the short form disclosure (*i.e.*, a model form for payroll card accounts, a model form for government benefit accounts, and several model forms for prepaid accounts generally). The short form disclosure must contain:

- The following fees: periodic fee, per purchase fee, ATM withdrawal fees, cash reload fee, ATM balance inquiry fees, customer service fees, and inactivity fee. These fees are referred to as “static fees” because all prepaid accounts must list these fees on the short form disclosure, even if the amount of the fee is zero or the fee relates to a feature that is not offered as part of the specific prepaid account program.
- The number of fee types in addition to the static fees (excluding any purchase price, any activation fee, and any finance charges related to credit) that the consumer may be charged under the specific prepaid account program.
- With limited exceptions, the two additional fee types that generated the highest revenue from consumers during the previous 24 months. Static fees, any purchase price, any activation fee, any finance charges related to credit, and any fee type that generated less than 5 percent of the total revenue from consumers are excluded from this disclosure requirement. The two additional fee types are determined for the specific prepaid account program or may be determined across programs with the same fee schedule. Financial institutions will need to review fee revenue periodically and may need to update the short form disclosure every 24 months.
- Statements regarding linked overdraft credit features, registration and FDIC/NCUA insurance, the URL for the Bureau’s website where the consumer can obtain general information about prepaid accounts (*i.e.*, cfpb.gov/prepaid), and information on where the consumer can find the long form disclosure.
- For payroll card accounts only, a statement that the consumer does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer. Alternatively, the short form disclosure may include a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and a statement directing the consumer to tell the employer which option the consumer chooses.

- For government benefit accounts only, a statement that the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive the consumer's benefit payments. Alternatively, the short form disclosure can include a statement that the consumer has several options to receive benefit payments followed by a list of the options available to the consumer, and a statement directing the consumer to tell the agency which option the consumer chooses.

Outside but in close proximity to the short form disclosure, a financial institution must disclose its name, the name of the prepaid account program, any purchase price for the prepaid account, and any fee for activating the prepaid account.

The long form disclosure sets forth comprehensive fee information as well as certain other key information about the prepaid account. The Prepaid Rule includes a sample form for the long form disclosure. The long form disclosure must include:

- A title, including the name of the prepaid account program;
- Information about all fees that may be imposed in connection with the prepaid account (not just fees for electronic fund transfers) and the conditions under which they may be imposed;
- A statement regarding registration and FDIC/NCUA insurance;
- A statement regarding linked overdraft credit features;
- A statement containing the financial institution's contact information;
- A statement directing the consumer to cfpb.gov/prepaid for general information about prepaid accounts; and
- A statement directing the consumer to cfpb.gov/complaint and the Bureau's telephone number (1-855-411-2372) to submit a complaint related to a prepaid account.

For prepaid accounts offering an overdraft credit feature, the long form disclosure must also include the Regulation Z disclosures described in § 1026.60(e)(1).

Generally, the pre-acquisition disclosures must be provided before a consumer acquires a prepaid account. The Prepaid Rule details the timing for providing pre-acquisition disclosures

for payroll card accounts, government benefit accounts, and other types of prepaid accounts. For prepaid accounts sold at retail locations, however, a financial institution may provide the long form disclosure after acquisition if the short form disclosure contains information enabling the consumer to access the long form disclosure by telephone or on a website and other requirements are met. For this purpose, a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account. A similar accommodation is made for prepaid accounts acquired orally by telephone.

The Prepaid Rule requires financial institutions to provide the pre-acquisition disclosures electronically for prepaid accounts that are acquired online or via a mobile device, but permits financial institutions to provide them without E-Sign consent. Generally, financial institutions must comply with the E-Sign Act when electronically providing other written disclosures (including pre-acquisition disclosures if the prepaid account is not acquired online or via a mobile device).

If the financial institution uses a foreign language in connection with a consumer's acquisition of a prepaid account in the circumstances detailed in the Prepaid Rule, a financial institution must provide the pre-acquisition disclosures in that foreign language. The financial institution must also provide the information required to be disclosed in the long form disclosure in English upon a consumer's request and on any part of a website where the financial institution discloses the information required to be disclosed in the long form disclosure in a foreign language.

Disclosures on Device or Entry Point

The Prepaid Rule requires financial institutions to make certain disclosures on the access device for the prepaid account, such as a card. If the financial institution does not provide a physical access device for the prepaid account, it must include these disclosures on the website, mobile application, or other entry point the consumer uses to electronically access the prepaid account.

Initial Disclosures

The Prepaid Rule requires financial institutions to provide Regulation E initial disclosures for prepaid accounts. The initial disclosures must include all of the information required to be disclosed in the pre-acquisition long form disclosure.

Error Resolution and Limitations on Liability

Generally, prepaid accounts must comply with Regulation E's limited liability and error resolution requirements, but the Prepaid Rule does make some modifications for prepaid accounts. Specifically, the Prepaid Rule extends Regulation E's limited liability and error resolution requirements to all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account, but does not require provisional credit for unverified accounts. Once a prepaid account has been verified, the financial institution generally may take longer than ten days to investigate and determine whether an error occurred only if it provisionally credits the consumer's account in the amount of the alleged error, minus a maximum of \$50.

Periodic Statements and the Periodic Statement Alternative

Generally, the Prepaid Rule requires financial institutions to provide periodic statements for prepaid accounts. However, a financial institution is not required to provide periodic statements for a prepaid account if it makes certain information available to a consumer. Specifically, a financial institution that relies on the periodic statement alternative for prepaid accounts must provide the consumer with:

- **Account balance information.** The financial institution must make the account balance information readily available by telephone;²
- **Electronic account transaction histories.** An electronic account transaction history must cover at least 12 months preceding the date on which the consumer electronically accesses the prepaid account; and
- **Written account transaction histories.** The financial institution must make written account transaction histories available upon request.³ A written account transaction history must cover at least 24 months preceding the date on which the financial institution receives the consumer's request for the written account transaction history.

² For government benefit accounts, account balance information must also be made available at a terminal, such as by providing balance information at a balance-inquiry terminal, routinely upon request, or on a terminal receipt.

³ For certain prepaid accounts, financial institutions are not required to provide a written account transaction history if the financial institution has not completed its consumer identification and verification process.

Periodic statements and account transaction histories must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date as well as other information.

Internet Posting and Submission of Prepaid Account Agreements

The Prepaid Rule generally requires issuers to submit to the Bureau new and amended prepaid account agreements and notification of withdrawn agreements no later than 30 days after the issuer offers, amends, or ceases to offer the agreement. The Prepaid Rule includes a *de minimis* exception and a limited product testing exception.

If an issuer is required to submit a prepaid account agreement to the Bureau and the prepaid account agreement is offered to the general public, the issuer must also post the account agreement in a prominent and readily accessible location on its website.

If a prepaid account agreement is not posted on the issuer's website, the issuer must provide a consumer with a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request for the agreement. The consumer must be able to request the agreement by phone.

Overdraft Credit Features

The Prepaid Rule amends Regulations E and Z to regulate overdraft credit features that are offered in connection with prepaid accounts. It adds the term "hybrid prepaid-credit card" to Regulation Z and sets forth specific requirements that apply to hybrid prepaid-credit cards. A card that is a hybrid prepaid-credit card is also a credit card under Regulation Z.

A prepaid card is a hybrid prepaid-credit card if:

- The card can be used from time to time to access credit from a credit account or credit subaccount that is separate from the prepaid account's asset feature (*i.e.*, from a separate credit feature);
- The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner; and

- The card can be used to access the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, to obtain cash, or to conduct P2P transfers.

A separate credit feature accessible by a hybrid prepaid-credit card is defined as a “covered separate credit feature” in the Prepaid Rule.

A separate credit feature that is not offered by the prepaid account issuer, its affiliate, or its business partner or that cannot be used to access the separate credit feature in the course of conducting transactions with the card to obtain goods, services, or cash, or to conduct P2P transfers is not a hybrid prepaid-credit card, but might be subject to other provisions of Regulation Z depending on its terms and conditions.

A prepaid card also is a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit through a negative balance on the prepaid account’s asset feature unless:

- The prepaid account issuer has a policy and practice of declining to authorize transactions where the consumer has insufficient or unavailable funds to cover the transactions or declining to authorize such transactions except when the amount of the transaction will not cause the account to be negative by more than \$10 or the transaction is conducted when incoming deposits to the prepaid account are pending;
- The prepaid account issuer does not charge certain credit-related fees; and
- The prepaid card cannot access credit from a covered separate credit feature (described above).

This exception is designed to address force pay transactions and other situations where incidental credit is extended as a negative balance on the prepaid account’s asset feature.

The Prepaid Rule generally requires prepaid account issuers to structure an overdraft credit feature accessible by a hybrid prepaid-credit card as a separate credit feature, not as a negative balance to a prepaid account. Therefore, under the Prepaid Rule, an overdraft credit feature should only be structured as a negative balance on a prepaid account if the issuer has a policy and practice of declining to authorize certain transactions as described above and does not impose certain credit-related fees on the asset feature of the prepaid account.

Issuers must wait at least 30 days after the prepaid account is registered before soliciting a consumer to link a covered separate credit feature to a prepaid account, and must obtain

consumer consent to link such a credit feature to the prepaid account. In addition, issuers are permitted to deduct all or part of the cardholder's debt on a covered separate credit feature automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month and only pursuant to a cardholder's signed written authorization. The issuer must allow consumers to have at least 21 days to repay the debt incurred in connection with the use of such covered separate credit features that are open-end (not home-secured) consumer credit plans.

The Prepaid Rule amends the compulsory use provision under Regulation E so that prepaid account issuers are prohibited from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through covered separate credit features.

A covered separate credit feature accessible by a hybrid prepaid-credit card is not an "overdraft service" for purposes of Regulation E. Therefore, financial institutions will not provide opt-in notices under Regulation E for covered separate credit features accessible by hybrid prepaid-credit cards, but will need to comply with Regulation Z.

Generally, a financial institution that provides a prepaid account with a covered separate credit feature must provide the same account terms, conditions, and features to prepaid accounts without a covered credit feature in the same prepaid account program. However, the financial institution may impose higher fees or charges on a prepaid account with a covered separate credit feature.

Effective Dates

The Prepaid Rule is generally effective on October 1, 2017. However, the requirement to submit prepaid account agreements to the Bureau is not effective until October 1, 2018.

The Prepaid Rule provides several accommodations regarding the application of the effective date to specific requirements. Specifically, the Prepaid Rule does not require financial institutions to pull and replace prepaid account access devices or packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. The Prepaid Rule does, however, require that financial institutions provide to consumers notice of certain changes in terms and updated initial disclosures as a result of the Prepaid Rule taking effect, in certain circumstances.

The Prepaid Rule also provides an accommodation for financial institutions that, on the effective date, do not have readily accessible data necessary to comply with the full requirements for

providing electronic and written account transaction histories or summary totals of fees. A financial institution may make available or provide such histories and summary totals using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements.