Insights: Alerts

CFPB Finalizes Changes to Prepaid Accounts Rule

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On January 25, 2017, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") finalized amendments[1] to its Prepaid Accounts Rule.[2] The Bureau has amended Regulation E, which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, as well as the official interpretations to those regulations. The rule generally adopts the proposed amendments, issued in June 2017, with certain modifications. The CFPB states that these amendments are intended to address, in part, certain concerns raised by prepaid companies about particular aspects of the Prepaid Accounts Rule that were not fully addressed in their comment letters on the 2014 proposed rule that led to the 2016 final rule.

The amendments:

- Revise the error resolution and limited liability provisions of the Prepaid Accounts Rule in Regulation E to provide that financial institutions are not required to resolve errors or limit consumers' liability arising from unverified prepaid accounts (other than payroll cards or government benefit accounts). For accounts where the consumer's identity is later verified, financial institutions are not required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification.[3] The Bureau also has made related changes to model disclosure language. In addition, the Bureau is requiring that, for accounts in programs for which there is no verification process, financial institutions either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there are no such protections, and further that such institutions comply with the process (if any) that they disclose. The Bureau believes that these changes will help encourage prompt registration and streamline compliance for financial institutions as well as ensure continued availability and utility of prepaid accounts for consumers.
- Create a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products.[4] This exception addresses certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the accounts are already subject to Regulation Z's open-end credit card rules. These changes are intended to ensure that consumers continue to receive full federal credit card protections on their traditional credit card accounts while making it easier for them to link those accounts to digital wallets that can store funds. The changes also reduce potentially unnecessary complications and expense to consumers who link credit cards to digital wallets.

- Expand the situations in which prepaid account issuers are permitted to run negative balances on prepaid accounts, provided certain conditions are met.[5]
- Extends the overall effective date of the Prepaid Accounts Rule by an additional 12 months to April 1, 2019. The amendments also extend the effective date for the agreement submission requirement in 12 C.F.R. § 1005.19(b) to April 1, 2019.
- Make clarifications or minor adjustments to provisions of the Prepaid Accounts Rule in Regulation E related to an exclusion from the definition of prepaid account, unsolicited issuance of access devices, several aspects of the rule's pre-acquisition disclosure requirements, and submission of prepaid account agreements to the Bureau.
- Make technical corrections to certain provisions of the Prepaid Accounts Rule in both Regulations E and Z.

While the CFPB continues to believe that early compliance may benefit both industry and consumers, the Bureau decided not to adopt a specific safe harbor provision for early compliance with the Prepaid Accounts Rule.

Along with the issuance of these amendments, the CFPB issued new and updated materials to support implementation. The CFPB states that updated versions of the *Prepaid Rule Small Entity Compliance Guide* and the *Preparing the Short Form Disclosure Guide* will be posted when available.

[1] Consumer Financial Protection Bureau, Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (Jan. 25, 2017), available at http://files.consumerfinance.gov/f/documents/cfpb_prepaid_final-rule_2018-amendments.pdf.

[2] On October 5, 2016, the CFPB issued its final rule to extend certain federal consumer protections to the prepaid market. See Consumer Financial Protection Bureau, Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z). 81 Fed. Reg. 83,934 (as amended at 82 Fed. Reg. 18,975). As we previously reported, the rule extends Regulation E (Electronic Fund Transfers) coverage to prepaid accounts, while adopting specific account provisions. It also generally expands coverage of Regulation Z (Truth in Lending) to overdraft credit features sometimes offered in conjunction with prepaid accounts. *See* http://www.kilpatricktownsend.com/en/Insights/Alert/2016/10/CFPB-Issues-Long.

[3] Unlike the proposal, the final amendments do not require financial institutions to limit liability or resolve errors that occurred prior to verification on accounts that are later successfully verified.

[4] Specifically, the Bureau has amended the definition of “business partner” in 12 C.F.R. § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. The exclusion applies only to traditional credit card accounts that are linked to a prepaid account. In order to qualify for the exclusion, certain conditions must be satisfied. Under this exception, the linked credit card account will still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule for hybrid prepaid-credit cards will not apply.

[5] Specifically, the Bureau has expanded the exception in 12 C.F.R. § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards.

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