Insights: Alerts

CFPB Seeks Comment on Proposed Changes to Prepaid Rule

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Written by **Gary R. Bronstein, Christina M. Gattuso, Edward G. Olifer,**

On June 15, the Consumer Financial Protection Bureau (CFPB or the Bureau) issued proposed amendments[1] to its Prepaid Account Products Final Rule (Prepaid Rule).[2] The CFPB has proposed to amend Regulation E, which implements the Electronic Fund Transfer Act, Regulation Z, which implements the Truth in Lending Act, and the official interpretations to those regulations. According to the CFPB, the proposed amendments address concerns raised by prepaid companies about certain aspects of the Prepaid Rule that were not fully addressed in their comment letters on the 2014 proposed rule that led to the 2016 final rule. The proposed amendments would:

- Revise the error resolution and limited liability provisions of the Prepaid Rule in Regulation E to provide that financial institutions would not be required to resolve errors or limit consumers' liability on unverified prepaid accounts (other than payroll cards or government benefit accounts). However, for accounts where the consumer's identity is later verified, financial institutions would be required to limit liability and resolve errors regarding disputed transactions that occurred prior to verification, consistent with the timing requirements of the Prepaid Rule. The Bureau also proposed related changes to model language and to require that, for programs where there is no verification process, financial institutions explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there is none, and comply with the process (if any) that they disclose.
- Create a limited exception to the credit-related provisions of the Prepaid Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products.[3] This exception is designed to address certain complications in applying the credit provisions of the Prepaid Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances appearing to pose lower risks to consumers.
- Make clarifications or minor adjustments to provisions of the Prepaid Rule related to an exclusion from the definition of prepaid account, unsolicited issuance of access devices, several aspects of the Prepaid Rule's pre-acquisition disclosure requirements, and submission of prepaid account agreements to the Bureau.

The CFPB is also requesting comment on whether a further delay in the Prepaid Rule's effective date[4] would be necessary and appropriate in light of the proposed amendments, and whether a specific safe harbor provision addressing early compliance would be necessary and appropriate for compliance with the Prepaid Rule prior to its effective date.

The Bureau also proposed other minor adjustments and clarifications to aspects of the Prepaid Rule that prepaid companies have asked questions about or told the Bureau are presenting implementation obstacles.

Comments on the proposed rule will be due 45 days after publication in the *Federal Register*.

Along with the proposed rule, the CFPB released an updated version of its Small Entity Compliance Guide for the Prepaid Rule, which reflects the recent effective date delay and also includes clarifications on several other issues for which industry has raised questions or suggested might be unclear.

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[1]Consumer Financial Protection Bureau, Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), (June 15, 2017), *available at* http://files.consumerfinance.gov/f/documents/20170615_cfpb_NPRM_Prepaid-Accounts-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 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/Knowledge_Center/Alerts_and_Podcasts/Legal_Alerts/2016/10/CFPB_Issues_Long.aspx .

[3]Specifically, the CFPB has proposed to amend 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 Rule’s tailored provisions applicable to hybrid prepaid credit cards if certain conditions are satisfied. The exclusion would apply only to traditional credit card accounts that are linked to a prepaid account.

[4]Earlier this year, the CFPB delayed the general effective date of the prepaid rule by six months, to April 1, 2018.

Related People

Gary R. Bronstein

t 202.508.5893

gbronstein@ktslaw.com

Christina M. Gattuso

t 202.508.5884

cgattuso@ktslaw.com

Edward G. Olifer

t 202.508.5852

eolifer@ktslaw.com