

Insights: Alerts

CFPB Proposes to Delay Prepaid Rule Effective Date

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On October 5, 2016, the Consumer Financial Protection Bureau (the Bureau or CFPB) issued its final rule to extend certain federal consumer protections to the prepaid market.¹ 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.²

The CFPB is proposing to delay the October 1, 2017 effective date of the rule by six months, to April 1, 2018.³ Through various discussions regarding implementation efforts, the Bureau learned that some industry participants are concerned that they will have difficulty complying with the rule while also ensuring continued availability of their prepaid products and with minimal disruption to consumers by October 1, 2017 deadline.⁴ The Bureau believes that delaying the effective date will give the CFPB an opportunity to assess whether any additional rule adjustments are appropriate, as well as help industry participants address certain packaging-related logistical issues for prepaid accounts that are sold at retail locations.⁵ The Bureau also recommended to make conforming amendments to certain regulatory text and commentary adopted in the rule to reflect the proposed effective date delay.

Specifically, the CFPB solicits comment on whether it should delay the effective date of the rule, and if so, whether six months is an appropriate length of time. The Bureau also solicits comment on the potential consequences of not extending the effective date. In particular, the Bureau asks commenters to provide specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on industry, consumers, and other stakeholders. Finally, the Bureau solicits comment about the impact of the proposed delay on consumers who use prepaid accounts.

While the CFPB is not proposing to amend any substantive rule requirements at this time, it is soliciting comments about any implementation challenges that may affect consumers, and how additional time will impact industry, consumers, and other stakeholders. If the CFPB determines that any substantive changes are necessary and appropriate, the Bureau states that it will issue a separate proposal and provide the public an opportunity to comment on those changes before finalizing.

We note that the Bureau is not proposing to delay the October 1, 2018 effective date required to submit prepaid account agreements to the Bureau in Regulation E (12 C.F.R. § 1005.19(f)(2)). The CFPB expects to have its agreement submission process in place by October 1, 2018, and the Bureau's outreach has not indicated that industry participants are concerned that they cannot meet the agreement submission effective date. The CFPB nonetheless solicits comment on whether it should delay the effective date of the agreement submission requirement, and if so, for what length of time.

The comment period on the proposal will close 21 days after it is published in the *Federal Register*.

¹Consumer Financial Protection Bureau, Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z) (Oct. 5, 2016), *available at* http://files.consumerfinance.gov/f/documents/20161005_cfpb_Final_Rule_Prepaid_Accounts.pdf.

²Kilpatrick Townsend & Stockton recently hosted a one-hour webinar during which Partner Christina Gattuso and Counsel Eamonn Moran discussed recent regulatory developments affecting consumer payment products and their impact on retailers and other providers of consumer goods. They highlighted the CFPB's Prepaid Rule and its sweeping impact on the prepaid market, including mobile wallets, peer-to-peer payment products/person-to-person (P2P) transfers, and other electronic prepaid accounts that can store funds, and discussed prospects for further developments in the consumer payment product market. For more information, please visit: http://www.kilpatricktownsend.com/en/Knowledge_Center/Alerts_and_Podcasts/Podcasts/2017/01/Consumer_Payments_in_2017.aspx.

³Consumer Financial Protection Bureau, Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date (Mar. 9, 2017), *available at* <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/prepaid-accounts-under-electronic-fund-transfer-act-regulation-e-and-truth-lending-act-regulation-z-delay-effective-date/>.

⁴For example, the Bureau put in place an exception in Regulation E (12 C.F.R. § 1005.18(h)(2)) pursuant to which financial institutions are not required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. Nonetheless, the CFPB understands that because of concerns about legal and regulatory exposure at both the federal and state level due to potential product changes, and in particular due to developments following release of the [final rule], some industry participants believe that they should in fact pull and replace non-compliant packaging. Industry has also raised related concerns regarding the production capacity of packaging manufacturers and other supply chain limitations leading up to the October 1, 2017 effective date due to increased demand by industry on a limited number of manufacturers. In addition, some industry participants have raised concerns about what they describe as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices (including recent changes thereto) that they did not fully address in their comment letters on the Prepaid Accounts Notice of Proposed Rulemaking (NPRM), which may lead to additional complexities for implementation and negative implications for consumers.

⁵In particular, the CFPB states that a six-month extension would both allow more time for package printing and allow pull-and-replace processes at retail locations to occur after the winter holiday season, which is a particularly busy time for retailers (the Bureau states that it understands that industry often effectuates pull-and-replace processes in the spring for precisely this reason).

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