

## [Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB: Final prepaid accounts rule provides ‘strong’ consumer protections, \(Oct. 5, 2016\)](#)

Banking and Finance Law Daily Wrap Up

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The Consumer Financial Protection Bureau has finalized a rule intended to provide "strong" federal protections for prepaid account users. The new rule amends Reg. E (12 CFR Part 1005) and Reg. Z (12 CFR Part 1026) and the regulations' official interpretations to give prepaid account consumers protections similar to those for checking account and credit card consumers.

The rule generally becomes effective on Oct. 1, 2017, but the provision of the rule requiring financial institutions to submit their prepaid account agreements to the bureau pursuant to 12 CFR Part 1005.19(b) becomes effective on Oct. 1, 2018.

**Cordray remarks.** "Our new [rule](#) closes loopholes and protects prepaid consumers when they swipe their card, shop online, or scan their smartphone," CFPB Director Richard Cordray said in [prepared remarks](#) for a press call. He noted that prepaid accounts are among the fastest growing consumer financial products in the United States. "The amount consumers put on general purpose reloadable cards grew from less than \$1 billion in 2003 to nearly \$65 billion in 2012. And the total value loaded onto them is expected to nearly double to \$112 billion by 2018."

**Proposal.** The CFPB issued a proposed rule on prepaid accounts in November 2014 (see [Banking and Finance Law Daily](#), Nov. 13, 2014). The final rule generally adopts the rule as proposed, with certain modifications based on public comments.

**Scope of final rule.** The final rule "applies specific federal consumer protections to broad swaths of the prepaid market for the first time," [according to the bureau](#). The rule applies to:

- traditional prepaid cards, including general purpose reloadable cards;
- mobile wallets;
- person-to-person payment products;
- other electronic prepaid accounts that can store funds;
- payroll cards;
- student financial aid disbursement cards;
- tax refund cards; and
- certain federal, state, and local government benefit cards such as those used to distribute unemployment insurance and child support.

**EFTA protections.** The final rule gives prepaid account consumers protections under the Electronic Fund Transfer Act and Reg. B that are similar to those for checking account consumers. Under the rule, financial institutions must:

- ensure that account holders have free and easy access to account information by telephone, online, and by written request unless they provide periodic statements;
- cooperate with consumers who find unauthorized or fraudulent charges, or other errors, on their accounts to investigate and resolve incidents in a timely way and, where appropriate, restore missing funds; and

- provide timely error resolution and limit consumer's responsibility for unauthorized charges to \$50 provided the consumer promptly notifies the financial institution.

**TILA protections.** Under the rule, prepaid issuers must give consumers protections similar to those on credit cards if consumers are allowed to use certain linked credit products to pay transactions that their prepaid funds would not fully cover. These protections mainly stem from the Truth in Lending Act, Credit Card Accountability Responsibility and Disclosure Act, and Reg. Z. The final rule uses the term "hybrid prepaid-credit card" to refer to a prepaid card that can access both an overdraft credit feature that is subject to Reg. Z credit card rules and the asset portion of a prepaid account.

Under the rule, prepaid companies are required to:

- ensure that consumers have the ability to repay the debt before opening a credit card account or increasing a credit line related to a prepaid card unless they consider the consumer's ability to make required payments—for consumers under 21, companies are required to assess their independent ability to repay;
- provide consumers with regular statements that detail fees, and if applicable, the interest rate, the amount they have borrowed, how much they owe, and other key repayment information; and
- give consumers at least 21 days to repay their debt before they are charged a late fee that is "reasonable and proportional" to the violation of the account terms in question.

**Prepaid v. credit.** To ensure that the prepaid account and the credit feature are distinct, the rule:

- requires a 30-day waiting period after consumers register the prepaid account before offering the credit feature;
- prohibits companies from seizing a credit repayment the next time a prepaid account is loaded unless the consumer consents—if the consumer does consent, the company cannot automatically take funds more than once per month; and
- requires companies to wait to demand payment until 21 days after the statement is mailed.

**Pre-acquisition disclosures.** The CFPB also finalized new "Know Before You Owe" [disclosures](#) for prepaid accounts that are intended to provide consumers with clear, upfront information about prepaid accounts. "The new rule sets an industry-wide standard on fee disclosures for prepaid accounts," according to the bureau.

Under the final rule, financial institutions generally must provide both a "short form" disclosure and a "long form" disclosure before a consumer acquires a prepaid account. The final rule provides guidance as to what constitutes acquisition for purposes of disclosure delivery. In general, a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account.

**Testing of disclosures.** The CFPB conducted testing of the prepaid disclosures after issuing its proposed rule in 2014. The bureau's findings are discussed in a [report](#) published in October 2015.

**Blog post.** The CFPB [posted](#) to its blog information on the final rule, intended to promote consumer understanding of the rule. The bureau advised prepaid card users that it can provide them with information and tips on their rights and options under the rule.

**Reactions to rulemaking.** Consumer Bankers Association CEO and President Richard Hunt [expressed concern](#) with the CFPB's use of overdraft protection as a credit feature, stating that "the Bureau's treatment of overdraft as a credit feature is troubling because it ignores years of precedent and leaves consumers with one less option for short-term liquidity coverage."

The Electronic Transactions Association [criticized](#) the CFPB for imposing "unnecessary regulations that will limit or even eliminate valuable services for the underserved."

Companies: Consumer Bankers Association; Electronic Transactions Association

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