

## [Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB proposes significant prepaid fund products consumer protections, \(Nov. 13, 2014\)](#)

Banking and Finance Law Daily Wrap Up

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Prepaid cards and other prepaid fund accounts would be subject to strong consumer protection requirements under rules being proposed by the Consumer Financial Protection Bureau. The bureau is considering requiring prepaid product sellers to give consumers account-opening disclosures and periodic statements. The [proposal](#) also would establish error-resolution procedures, limit consumer liability for unauthorized charges, and impose rules that would govern prepaid cards offering credit features, such as those that allow overdrafts. The [changes](#) would be accomplished through amendments to Reg. E—Electronic Fund Transfers (12 CFR Part 1005) and Reg. Z—Truth in Lending (12 CFR Part 1026).

The CFPB proposal is not limited to accounts that rely on physical cards. It also would apply to accounts that give consumers access to prepaid funds by using cell phones or through other electronic means. It covers general purpose reloadable cards, payroll cards, and other types of prepaid fund accounts that are not considered to be gift cards. The proposal relies on a CFPB [study](#) that analyzed 325 prepaid account program agreements.

**Market background.** [According to CFPB Director Richard Cordray](#), the number of transactions carried out using prepaid fund accounts is growing rapidly. The number of card-based transactions alone expanded by more than 150 percent between 2009 and 2013, he said, and the use of mobile device-based and electronic transactions is increasing as well.

Unbanked and underbanked consumers are disproportionately likely to rely on prepaid cards, Cordray said. These consumers are “some of the most economically vulnerable” in the country. Prepaid cards and other accounts can be a useful way for them to handle their finances, he agreed, but the accounts must be accompanied by appropriate consumer protections.

According to the CFPB study, the charges and fees consumers pay vary widely from program to program. A 2014 study by the Federal Reserve Bank of Philadelphia said a consumer would, on average, pay fees ranging from \$7 to \$12 per month. However, a 2014 study by the Pew Charitable Trust estimated a range of \$10 to \$30 per month.

**Account types.** General purpose reloadable (GPR) cards are the prototypical prepaid products, allowing consumers to load funds on the card and use those funds at many locations or for online transactions. Some cards allow consumers to load as much as \$15,000, the CFPB notes.

Virtual GPR cards allow consumers access to their funds online or at a physical location by using a smartphone. In addition, GPR card accounts can be accessed using “digital wallets,” the CFPB says.

Increasingly, employers are using GPR cards to pay employees’ wages or salary. They also can be used to distribute loans or scholarship funds to college students, or by government agencies paying benefits or distributing child support payments.

While GPR cards are widely available for purchase at merchants or online, they usually are not fully functional unless they are registered with the program manager, the bureau says. Without registration, there might be a reduced limit on the amount that can be loaded on an account, reloading might not be permitted, and there might be restrictions on how or where the card can be used.

**Covered accounts.** The proposal would apply to prepaid accounts, which would be defined as cards, codes, or other devices of a type not already included in Reg. B's definition of "account" that:

- were established primarily for personal, family, or household purposes;
- were issued either for a prepaid amount or can be loaded after issuance;
- can be used to buy goods and services at multiple, unaffiliated merchants, at automated teller machines, or for person-to-person transfers; and
- are not gift cards or certificates; store gift cards; or loyalty, award, or promotional gift cards.

**Disclosures.** As part of the bureau's "Know Before You Owe" initiative, the proposal would require that consumers have access to information about a prepaid program before they buy in. The CFPB is proposing [two model forms](#) that would tell consumers about the fees that will be charged and provide related information. To ensure the information is available before a consumer makes a purchase, the seller would be required to post their account agreements on their websites and to submit the agreements to the bureau for posting on its website.

**Periodic statements.** Prepaid account sellers would be required to give consumers easy, free access to information about their accounts, either by sending periodic statements to consumers or making the information available to them online. Consumer also would be able to request written statements. The required information would include not only the account balance but also a history of the account's transactions and fees.

**Error resolution.** The proposal would give consumers error-resolution rights comparable to those available for other account holders under Reg. E. According to the CFPB, consumers currently might not have any avenue available to correct errors.

The proposal would require the prepaid account seller to investigate claims of errors and resolve the claims in a timely manner. Similar to other Reg. E error resolution procedures, a consumer's account would be provisionally credited for the disputed amount if the investigation could not be finished within the required time.

However, the error resolution procedures would be available only for cards that have been registered with the account seller.

**Protection for fraud or lost cards.** The proposal would give consumers some protection against losses if a card is lost or an access code is stolen. The bureau notes that this protection already is available for credit cards and debit cards. If a consumer notifies the account seller promptly, he will be liable for no more than \$50 in unauthorized charges.

**Credit features.** While most prepaid accounts do not have credit features, some do permit consumers to overdraw the funds loaded into the accounts. According to the CFPB, the proposal would treat these accounts as credit cards. Cordray conceded the bureau recognizes that this will "make certain credit features impractical for prepaid cards."

Perhaps most significant is that credit features could only be offered after the account seller performs the same ability-to-pay analysis that is required for credit cards. If the consumer is under 21, an analysis of his independent ability to pay would be needed.

Also, like credit card accounts, prepaid accounts that offer credit would need to:

- provide consumers monthly account statements;
- allow consumers at least 21 days to pay before imposing a late fee;
- limit late fees to what are reasonable and proportional in light of the tardiness;
- limit first-year fees to no more than 25 percent of the credit limit;
- refrain from increasing the interest rate unless the consumer misses two consecutive monthly payments; and
- give 45 days advance notice before increasing the interest rate.

Special rules also are being proposed in light of the nature of prepaid accounts. First, an account seller could not offer a credit feature until at least 30 days have passed after the account has been registered.

Second, the rule would create some separation between the prepaid funds and the credit. If an account is reloaded when there is an outstanding credit balance, then:

- the account seller could not demand the credit be repaid at the time of the deposit;
- the seller could not deduct funds from the account to repay the credit when it was due unless the consumer affirmatively consented; and
- the prepaid account could not be debited to repay a credit balance more than once each calendar month.

There will be a 90-day comment period after the proposal is published in the *Federal Register*.

MainStory: TopStory ConsumerCredit CFPB CreditDebitGiftCards TruthInLending