

An Overview of the CFPB's Prepaid Account Rule

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The [CFPB's proposed prepaid account rule](#) was published in the Federal Register today, kicking off a 90-day comment period for the public to voice their support or objections to the Bureau's proposed revisions to Regulation E and Regulation Z.

To help navigate the comprehensive 235-page rulemaking, Payment Law Advisor has put together this roadmap of some of the CFPB's more salient proposed amendments, based on our initial reading of the rulemaking when it was published back in November. Of course, the rulemaking itself contains important explanatory and interpretative guidance that are too numerous and extensive to summarize here, but we hope this roadmap will at least give you a better sense of the nature and scope of the CFPB's efforts.

As we discuss in further detail below, the proposed prepaid account rule would, in general:

- Revise Regulation E to define a prepaid account and extend Regulation E protections to general purpose reloadable (GPR) cards and other non-reloadable prepaid accounts, which may include peer-to-peer transfers, digital wallets that store funds, and virtual currency products; and
- Amend Regulation Z's definition of "credit card" to include a prepaid card that accesses a credit plan, such as overdraft services, or certain other credit plans linked to prepaid accounts that are accessed by account numbers.

As noted, the 90-day comment period begins today, which means that comments are due on or before March 23, 2015. During this period, we will continue to review and interpret the proposed rules and analyze their impact on the industry.

Proposed Revisions to Regulation E

Disclosures

The proposed rule details when a financial institution is required to make certain disclosures and provides model short form and long form disclosures.

The short form would consist of a "static" disclosure that would set forth fees that must be disclosed for all prepaid account products, even if such fees are not charged or if those features are not offered in connection with a particular prepaid account product.

The long form would set forth all of a prepaid account product's fees and their qualifying conditions under which those fees could be imposed, except for accounts that consumers acquire in retail stores or orally by telephone.

Pursuant to proposed Section 1005.18(b)(3)(iii)(A), the short form disclosure would be in a form substantially similar to the proposed Model Forms A-10(a) through (d), and the long form would be in a form substantially similar to the proposed Sample Form A-10(e).

Proposed Revisions

Section 1005.18(b)(1)(i) to require a financial institution to provide short and long form disclosures, as described in proposed Section 1005.18(b)(2)(i) and (ii), except when a consumer acquires a prepaid account in a retail store or orally by telephone.

Section 1005.18(b)(1)(ii) to require financial institutions to provide a written version of the short form disclosure before a consumer acquires a prepaid account in person in a retail store. But it would permit financial institutions to delay providing the long form disclosure until after the consumer acquires a prepaid account as long as certain conditions are met. Those conditions are described in proposed Section 1005.18(b)(1)(ii)(A) through (C).

Section 1005.18(b)(1)(iii) to require a financial institution to disclose orally the short form information that would be required by proposed Section 1005.18(b)(2)(i) (i.e. short form) when a consumer acquires a prepaid account orally by telephone. Proposed Section 1005.18(b)(1)(iii) would further state that a financial institution may provide the disclosures required by Section 1005.18(b)(2)(ii) (i.e. long form) after a consumer acquires a prepaid account orally by telephone if the financial institution communicates to a consumer orally, before a consumer acquires the prepaid account, that the information required to be disclosed by Section 1005.18(b)(2)(ii) is available orally by telephone and on a website.

Section 1005.18(b)(2)(i) to set forth the information a financial institution would have to provide on the short form disclosure.

Sections 1005.18(b)(2)(i)(B)(1) through (14) to set forth the type of fees and information to be disclosed on short form.

Section 1005.18(b)(2)(i)(A) to require, when offering a payroll card account, a financial institution must include a statement on the short form that a consumer does not have to accept the payroll card account, and that a consumer can ask about other methods to get wages or salary from the employer instead of receiving them via a payroll card account, in a form substantially similar to the language set forth in Model Form A-10(b).

Section 1005.18(b)(2)(i)(C) to set forth how, within the confines of the proposed short form disclosure, financial institutions could disclose fees that may vary.

Sections 1005.18(b)(2)(ii)(A) through (E) to set forth the kind of information to be disclosed on the long form disclosure.

Section 1005.18(b)(4) to include specific formatting requirements for disclosure forms.

Section 1005.18(b)(5) to explain that disclosures required under this section that are provided in writing or electronically would have to be segregated from everything else and could contain only information that is directly related to the disclosures required under this section.

Revise Section 1005.18(b)(6) to require a financial institution to have short and long form disclosures in the language that the financial institution primarily uses.

Section 1005.18(b)(7) to require that certain disclosures be made on the actual prepaid account access device itself.

Section 1005.18(c)(1) and (2) as new Section 1005.18(d)(1) and (2) to extend the initial disclosure requirements regarding access to account information and error resolution, and annual error resolution notices, to all prepaid accounts.

Below is one proposed model short form disclosure for prepaid accounts with overdraft services and other credit features.

A-10(c)- Model Form for Short Form Disclosures for Prepaid Accounts With Overdraft

Services and Other Credit Features

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$4.95*	\$0 with sig. \$0 with PIN	\$0 in-network \$2.00 out-of-network	\$2.00*
This card may charge credit-related fees.			
ATM balance inquiry (in-network or out-of-network)			\$0 or \$1.00
Customer service			\$1.50 per call
Inactivity (no transactions for 3 months)			\$4.50 per month
[Incidence-based fee]			\$2.95
[Incidence-based fee]			\$3.95
[Incidence-based fee]			\$1.00
*Fees can be lower depending on how and where this card is used.			
We charge 6 other fees not listed here.			
Find details and conditions for all fees and services inside the package or call 800-234-5678 or visit bit.ly/XYZprepaids .			
Register your card with XYZ Prepaid Company to protect your money.			
This card does not provide [FDIC][NCUSIF] insurance.			
For more information about prepaid cards, visit cfpb.gov/prepaids .			

Initial Disclosure of Fees

Financial institutions must disclose to consumers, as part of the account's terms and conditions, any charges for electronic fund transfers or for the right to make such transfers, as well as, all other fees imposed by the financial institution in connection with a prepaid account. For each fee, a financial institution must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third party fees may apply.

Proposed Revisions

Section 1005.18(f) to require all fees that may be imposed in connection with the prepaid account be included in the initial account disclosures. See Sample Form A-10(e).

Periodic Statements

Under the proposal, financial institutions would be required to either provide periodic statements or make account information easily accessible online or by telephone, and for free.

The periodic statements must include certain information, including without limitation, all fees charged, and a summary total of both monthly and annual fees. An alternative delivery mechanism permits online posting of transaction history, provided 18 months of history is available and a written history may be delivered in writing upon request.

Proposed Revisions

Sections 1005.18(c)(1) and (2) to apply Regulation E's periodic statement requirement to prepaid accounts, which is currently provided under Sections 1005.18(b)(1)(ii) and (iii).

Section 1005.18(c)(1)(i) to allow financial institutions to provide access to the consumer's account balance for prepaid accounts by telephone (in lieu of a periodic statement).

Sections 1005.18(c)(1)(ii) and (iii) to expand the length of time to 18 months for the period of time to cover for online access and for written history of the consumer's account transactions.

Section 1005.18(c)(3) to disclose all fees assessed against the account, in any electronic or written account histories and periodic statements.

Section 1005.18(c)(4) to require financial institutions to disclose, in any electronic or written account histories and periodic statements, monthly and annual summary total of the amount of all fees imposed on a prepaid account, and the total amounts of deposits to and debits from a prepaid account.

Limits on Consumer Liability for Unauthorized Transfers

The Bureau proposes to extend to registered prepaid accounts the Regulation E limits on consumers' liability for unauthorized transfers, provided that the consumer gives timely notice to the financial institution, and requires financial institutions to resolve certain errors in covered. An exception applies for unverified accounts, as discussed below.

Proposed Revisions

Section 1005.18(e)(1) to extend to all prepaid accounts the existing limited liability provisions of Regulation E as set forth in the existing Section 1005.6(b)(3) with modified timing requirements for financial institutions following the periodic statement electronic delivery alternative in proposed Section 1005.18(c)(1).

Proposal does not modify the requirement to comply with existing **Section 1005.6(b)(4)**, regarding an extension of time limits if a consumer's delay in notifying the financial institution was due to extenuating circumstances, nor any other provisions of Section 1005.6.

Error Resolution Rights

The proposed rule would require financial institutions to work with consumers who encounter errors with their account. Currently, prepaid customers who are double-charged for a transaction or charged an incorrect amount may not be guaranteed a practical way to fix the problem. This proposal would require financial institutions to investigate errors that consumers report on registered accounts and to resolve those errors in a timely manner. An exception applies for unverified accounts, as discussed below.

Proposed Revisions

Section 1005.18(e)(2) to extend to all prepaid accounts the error resolution provisions of Regulation E, including provisional credits, with modifications to the timing requirements in proposed for financial institutions following the periodic statement alternative in proposed Section 1005.18(c)(1) discussed above.

Unverified Accounts

The proposed rule would require financial institutions to work with consumers who encounter errors with their account. Currently, prepaid customers who are double-charged for a transaction or charged an incorrect amount may not be guaranteed a practical way to fix the problem. This proposal would require financial institutions to investigate errors that consumers report on registered accounts and to resolve those errors in a timely manner. An exception applies for unverified accounts, as discussed below.

Proposed Revisions

Section 1005.18(e)(2) to extend to all prepaid accounts the error resolution provisions of Regulation E, including provisional credits, with modifications to the timing requirements in proposed for financial institutions following the periodic statement alternative in proposed Section 1005.18(c)(1) discussed above.

Credit Card Plans Linked to Prepaid Accounts - 30 Day Period

This proposed rule would require a 30 day period before a financial institution can offer credit features to a registered prepaid account.

Proposed Revisions

Section 1005.18(g)(1)(i) to prevent a financial institution to solicit or provide applications to holders of prepaid account prior to 30 days after the prepaid account was registered.

Section 1005.18(g)(1)(ii) to prevent a financial institution to allow the prepaid access devices into credit cards to holders of prepaid account prior to 30 days after the prepaid account was registered

Section 1005.18(g)(1)(iii) to prevent a financial institution to allow credit extensions from credit card plans to be deposited in prepaid accounts prior to 30 days after the prepaid account was registered

Section 1005.18(g)(2) would set forth rules related to the terms applicable to the prepaid account when a credit card plan is linked to a prepaid account.

Posting of Terms and Conditions

The proposed rule would require that prepaid card issuers submit their prepaid account agreements to the CFPB on a quarterly basis and make those agreements available on their own websites. This provision mirrors the Regulation Z submission and posting requirement for credit card agreements.

Section 1005.19(b) would require issuers to submit prepaid account terms to the CFPB each quarter for each product offered to the public. Amended agreements must be updated and notices of withdrawal must be provided.

Section 1005.19(b)(4) and (5) provide exceptions when an issuer has fewer than 3,000 accounts open (the *de minimis* exception) or a single product is not offered to the public other than in connection with a test and has fewer than 3,000 accounts open (the *testing* exception).

Section 1005.19(c) would require prepaid card terms to be posted on the issuer's website or promptly provide a copy of a particular agreement upon request.

Preauthorized Transfers – Compulsory Use Restrictions

The Bureau is proposing to revise the compulsory use prohibition in Regulation E, Section 1005.10(e)(1), to make clear that it applies to credit features offered on prepaid accounts.

This section will cross-reference Regulation Z, Section 1026.2(a)(15)(i) and comment 2(a)(15)-2.i.F to explain that a prepaid card is not a credit card under Regulation Z if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. Thus, the prohibition in § 1005.10(e)(1) would not apply to credit extended under an overdraft credit plan that is not a credit card account.

Proposed Revisions

Section 1005.10(e)(1) to provide that the exception to the prohibition on compulsory use of electronic fund transfers under an overdraft plan or extension to maintain a specified minimum balance in the consumer's account does not apply to credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account, where the access device is a credit card under Regulation Z, or accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Comment 10(e)(2)-2 to clarify that Regulation E does not permit a government agency to require individuals to receive government benefits by direct deposit to any particular institution.

Relation to Other Laws

The proposal would provide that the unsolicited issuances rules in Regulation Z § 1026.12(a) apply to the addition of a credit feature or plan to an access device for a prepaid account where the credit feature or plan would make the access device into a credit card under Regulation Z, even if the credit feature is structured as an overdraft line of credit.

Proposed Revisions

Section 1005.12(a)(1)(ii) to provide that this provision does not apply to access devices for prepaid accounts.

Section 1005.12(a)(1)(iii) to provide that this section, which provides that the issuance rules in EFTA and Regulation E govern the addition of an overdraft service, as defined in § 1005.17(a), would not apply to an access device for prepaid accounts.

Section 1005.12(a)(2)(i) to provide that the unsolicited issuance rules in TILA and Regulation Z § 1026.12(a) would apply to the addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z.

Section 1005.12(a)(1)(iv) by moving the current language to proposed § 1005.12(a)(1)(iv)(A) and applying it to access devices that do not access prepaid accounts.

The Bureau also proposes to add proposed § 1005.12(a)(1)(iv)(B) to provide that with respect to a prepaid account, EFTA and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit, under a credit plan subject to Regulation Z subpart B, that is incident to an electronic fund transfer when the consumer's prepaid account is overdrawn.

Government Benefit Accounts

The Bureau is proposing to modify existing Section 1005.15 to address the proposed revisions for government benefit accounts. These proposed revisions and additions would generally align the requirements in Section 1005.15 with the proposed requirements for prepaid accounts generally in Section 1005.18, which are discussed below.

Before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in proposed Section 1005.18(b).

Proposed Revisions

Section 1005.15(a)(1) to reflect that proposed Section 1005.15 is no longer only providing an exception to a Regulation E requirement.

Section 1005.15(c) to extend to government benefit accounts the same pre-acquisition disclosure requirements proposed for prepaid accounts both under Section 1005.18(b).

Section 1005.15(c) as new Section 1005.15(d)(1), which would generally align the periodic statement alternative for government benefit accounts with the proposed alternative for prepaid accounts discussed below in the section-by-section analysis of proposed Section 1005.18(c).

Section 1005.15(d)(2) to require that a government agency comply with the account information requirements applicable to prepaid accounts as set forth in proposed Section 1005.18(c)(2), (3), and (4).

Section 1005.15(d), renumbered as new Section 1005.15(e), to adjust the corresponding timing provisions therein and to align with the requirements of proposed Section 1005.18(d) for prepaid accounts generally, discussed below.

Section 1005.15(e)(1)(i) to require that a government agency modify the disclosure required under Section 1005.7(b).

Section 1005.15(e)(1)(ii) to mirror existing Section 1005.15(d)(1)(iii) regarding error resolution.

Section 1005.15(e)(2) to mirror existing 1005.15(d)(2) regarding annual error resolution notice.

Section 1005.15(e)(3) to mirror existing Section 1005.15(d)(3) to adjust the timing requirements for reporting unauthorized transfers.

Section 1005.15(f) to provide that for government benefit accounts, a government agency shall comply with the requirements governing initial disclosure of fees and other key information applicable to prepaid accounts as set forth in proposed Section 1005.18(f), in accordance with the timing requirements of proposed Section 1005.18(h).

Section 1005.15(g) to require that for credit plans linked to government benefit accounts, a government agency must comply with prohibitions and requirements applicable to prepaid accounts as set forth in proposed Section 1005.18(g).

Proposed Revisions to Regulation Z

The proposed revisions to Regulation Z would: amend key definitions, including the terms credit card and finance charge; impose a 30-day waiting period to link prepaid accounts to credit cards; apply traditional credit card rules, including ability to pay requirements, and fee caps and limits, to prepaid account overdrafts; require the issuance of periodic statements; and require that at least 21 days be given to repay the credit.

Definitions

A person that offers credit plans accessed by prepaid accounts, such as overdraft services, would be covered by Regulation Z's open-end (not home-secured) rules and credit card rules in subparts B and G. The rule would apply where the prepaid account charges a finance charge for the credit and deposits derived from the extension of credit may only be deposited onto a particular prepaid account.

Proposed Revisions

Section 1026.2(a)(15) amends the definition of "credit card" to include a prepaid card used from time to time to access a credit plan unless the credit plan is payable in four or fewer installments and does not impose a finance charge (Comment 1026.2(a)(15)-2.i.F). A "credit card" is also defined to include an overdraft line of credit that is accessed by "a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor."

Section 1026(a)(15) amends the definition of "credit card" to include prepaid accounts, as defined under proposed Regulation E, and to include certain extensions of credit linked to a prepaid account.

Section 1026.2(b)(2)(ii) amends the definition of "finance charge" to include charges for access to credit imposed on a prepaid account.

Credit Card Plans Linked to Prepaid Accounts - 30 Day Period

The proposal requires credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may solicit or open a credit card account associated with the prepaid account. But this appears to only apply "where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor" (e.g. overdrafts).

Proposed Revisions

Section 1026.12(h) prohibits card issuers from opening or soliciting overdraft services on a prepaid account for 30 days after registration. Solicitations are offers to open a credit or charge card account that does not require a consumer to complete an application, including a "firm offer of credit" under the Fair Credit Reporting Act.

Application of Credit Card Rules: Ability to Repay, Fee Caps and Limits, etc.

By expanding the definition of credit card to include a prepaid account, the proposal would require prepaid card issuers to perform underwriting when opening an account that is also considered a credit card under in accordance with Regulation Z's ability-to-pay requirements. Regulation Z would also limit the types of fees that may be charged during the first year after such a credit card account is opened. Among other things, most fees (other than periodic interest rates) charged during the first year after the credit card account is opened would be subject to a cap of 25 percent of the initial credit line.

Periodic Statements

The proposed rule would exempt charge cards accessed by a prepaid card and charge cards accessed by an account number for overdraft purposes from the requirements that each periodic statement include a due date and the amount of any late payment fee.

Proposed Revision

Section 1026.7(b)(11)(ii)(A) to provide that the due date disclosure set forth in Section 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts where the charge card account is either: (i) accessed by a charge card that is a prepaid card; or (ii) where the charge card account is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor (e.g. in connection with an overdraft).

21 Days to Repay

The proposal would require that consumers using overdraft services or credit features in connection with prepaid cards be given at least 21 days to repay the debt incurred.

Proposed Revision

Comment 2(a)(15)-3.ii would require that periodic statements required by Regulation Z be mailed or delivered at least 21 days before the due date and that the issuer not treat as late any payment received within 21 days after the mailing or delivery of the periodic statement.

Effective Dates

The Bureau proposes that all prepaid accounts comply with the requirements of the Electronic Funds Transfer Act and Regulation E, as modified by proposed Section 1005.18, within nine months of publication of the Bureau's final rule in the Federal Register. See Section 1005.18(h)(1). This nine month effective date would apply to disclosures for newly-manufactured prepaid account materials and disclosures or other information delivered to consumers online or by telephone.

The Bureau is proposing a delayed effective date for prepaid account packaging, access devices, and other printed materials that were created prior to the nine-month effective date, so that immediate removal or destruction of unsold or undistributed prepaid account packaging, access devices, or other physical materials created prior to the nine month effective date would not be mandated. However, within 12 months of publication of the Bureau's final rule in the Federal Register, all prepaid accounts would have to comply fully with the requirements of the rule including its disclosure requirements, regardless of when the physical packaging, access devices, or other physical materials on which such disclosures appear were created. See Section 1005.18(h)(2).

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