

CFPB Issues Final Rule to Regulate Prepaid Products; Prepaid Providers Given One Year to Comply

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Yesterday the CFPB [released a final rule](#) that will impose a variety of consumer protection requirements on prepaid products, such as requiring specified disclosures before product purchase and compelling financial institutions to limit consumer losses for lost or stolen cards. The CFPB had previously released a proposed rule, which we discussed [here](#), and the final rule leaves unchanged many of those proposals. In [announcing the rule](#), CFPB Director Richard Cordray acknowledged that many prepaid companies already offer some of these protections but argued that uniform requirements are necessary to ensure equal treatment and minimize consumer harm across the board.

The rule covers traditional prepaid products like general purpose reloadable cards, as well as mobile wallets, person-to-person payment products, electronic prepaid accounts, payroll cards, and certain federal, state and local government benefit cards. The [rule](#) itself is 1,689 pages and responds to the 65,000 comments received on the proposed rule. Highlights include the “Know Before You Owe” disclosures, general consumer protections that mirror those imposed under the Electronic Fund Transfer Act for checking account consumers, and credit-like protections when prepaid issuers extend credit to cover transactions that prepaid products would not fully cover.

“Know Before You Owe” Disclosures

The final rule requires two forms of disclosures: (1) a short form disclosure provided before a consumer acquires a prepaid account that includes information about periodic fees, per purchase fees, ATM withdrawal fees, cash reload fees, and balance inquiry fees, amongst others; and (2) a long form disclosure that includes a comprehensive list of fees and other information associated with the account. The CFPB provided examples of each disclosure type, which are available [here](#).

Additionally, the rule requires prepaid account issuers to post on their websites prepaid account agreements that are offered to the general public to facilitate comparison shopping. Issuers must also submit all of their prepaid account agreements, including those not publicly posted, to the Bureau.

Prepaid Protections

The final rule requires issuers to provide a number of consumer protections similar to those imposed under the Electronic Fund Transfer Act and Regulation E, such as:

- [Access to account information](#). Rather than require periodic statements as required under

Regulation E for checking accounts, the final rule permits institutions to make available to consumers certain methods of accessing information about their prepaid accounts, such as free by telephone, online, or in writing upon request. Financial institutions are also required to provide summary totals of fees assessed to the consumer on a monthly and annual basis.

- Limited liability and error resolution. The final rule extends Regulation E's protections related to limited liability and error resolution to prepaid accounts. As to limited liability, the rule limits a consumer's responsibility for unauthorized changes to \$50 so long as the consumer promptly notifies the financial institution of potentially fraudulent conduct. As to error resolution, the rule requires financial institutions to promptly investigate and resolve incidents, including by restoring missing funds and provisionally crediting the disputed amount while it finishes its investigation. The requirements generally apply regardless of whether the financial institution has successfully identified and verified the consumer holding the account, except that financial institutions are not required to provisionally credit disputed amounts until the consumer's identity has been verified.

Credit Protections

The final rule also revises Regulations E and Z to regulate how prepaid accounts offer overdraft credit features.

- Separate accounts. For so called "hybrid prepaid-credit card" accounts where the consumer can access both a prepaid account and an overdraft credit feature, the issuer must treat the credit features as distinct from the asset account. The issuer cannot allow a negative balance directly on the prepaid account except for specified limited circumstances (*e.g.*, where the credit is incidental and *de minimis* and the issuer does not charge credit-related fees).
- Ability to pay. The rule requires prepaid companies to consider the consumer's ability to pay the balance before opening a separate credit account linked to the consumer's prepaid account. Issuers must also wait at least 30 days after a prepaid account is registered before soliciting a consumer to link a covered credit feature to the prepaid account.
- Limitations on fees. The rule also extends certain protections under Regulation Z related to fee restrictions, such as limits on fees charged in the first year after account opening and limits on penalty fees. For example, total fees for credit features cannot exceed 25 percent of the credit limit during the first year a credit account is open. Moreover, issuers are only permitted to raise interest rates on existing balances if a cardholder misses back-to-back payments and, for new purchases, must provide at least 45 days advance notice of the change in interest rate and allow the consumer to close their account during that time.

*** The new rule generally becomes effective October 1, 2017 and financial institutions are not required to pull and replace prepaid account packaging materials prior to that date to comply with disclosure requirements. Moreover, issuers are not required to submit prepaid account agreements to the Bureau until October 1, 2018.

We expect that the Bureau will issue additional materials to facilitate compliance with the prepaid rule in the coming months and will continue to monitor and post about developments here.