

# CFPB Releases Proposed Changes to Final Rule on Prepaid Accounts

On June 15, 2017, the Consumer Financial Protection Bureau (CFPB) released [proposed changes](#) (Proposal) to its final rule, published last November, which created consumer protections for prepaid accounts under Regulation E and Regulation Z (Final Rule). The CFPB is proposing these revisions because of feedback it received through its outreach to industry participants regarding the Final Rule combined with comments received in response to its [effective date proposal](#) (which was later [finalized](#) and which delayed the effective date by six months to April 1, 2018). Comments on the Proposal must be received by August 14, 2017.

The CFPB also released an updated version of its [Small Entity Compliance Guide](#). The update reflects the effective date delay as well as other clarifications on the Final Rule. The update does not include any of the proposed changes included within the June 15, 2017 Proposal.

## Proposed Changes to the Final Rule and Requests for Comment

- **Limitations on liability and error resolution for unverified accounts:** The Final Rule revises Regulation E to extend error resolution and limited liability protections under §§ 1005.6 and 1005.11 to prepaid accounts even if the financial institution has not completed its consumer identification and verification process. In response to some financial institutions' plans to address potential fraud, which may include limiting how consumers could access funds if their identity could not be verified, the CFPB has proposed to amend the Final Rule. The Proposal provides an exception to the liability limits and error resolution requirements if the prepaid account is not a payroll card or government benefit account, and the financial institution: (i) has not completed its verification process, (ii) completed its verification process but could not verify the consumer's identity, or (iii) does not have a consumer identification and verification process for the prepaid account. Financial institutions may, under the Proposal, offer prepaid accounts for which there is no customer identification or verification process, if the financial institution either discloses its error resolution process and limitations on liability or explains that it has none.
- **Digital wallets and linked credit card accounts:** The Final Rule amended both Regulations Z and E to impose requirements on "hybrid prepaid credit cards," which are prepaid accounts that allow the consumer to overdraw a prepaid account by accessing a credit feature in the course of a transaction, if the credit feature is offered by the prepaid card issuer, its affiliates, or its "business partner." Business partners are broadly defined to include prepaid account issuers and creditors who agree to cross market credit features and/or prepaid accounts, if the prepaid account can be used at point of sale to access the credit feature. In addition, the Final Rule's definition of "prepaid account" includes digital wallets in which consumers can store funds.

After the Final Rule was issued, digital wallet providers expressed concern that the hybrid prepaid-credit card requirements would unduly burden a consumer's ability to link a digital wallet to traditional credit cards—which are already subject to Regulation Z's credit card rules—offered by credit card issuers with which the wallet provider has cross-marketing or other agreements. To alleviate these and other concerns, the Proposal would exclude arrangements between prepaid account issuers (including digital wallet providers) and credit card issuers from the definition of "business partner" and thus from the hybrid prepaid-credit cards rules, if certain conditions are met. These include conditions aimed at ensuring that consumers are not required to link their digital wallets and cards, and that certain terms of the prepaid accounts and the credit cards do not vary based on whether the consumer agrees to link the prepaid accounts and the credit cards.

- **Exclusion from coverage for certain loyalty, award, or promotional gift cards:** The Final Rule's new definition of "prepaid account" in Regulation E excludes loyalty, award, or promotional gift cards that meet the criteria in § 1005.20(a)(4)(i) and (ii), and satisfy the disclosure requirements in § 1005.20(a)(4)(iii). Some industry participants expressed confusion as to whether a loyalty, award or promotional gift card that meets the criteria in § 1005.20(a)(4)(i) and (ii), but for which disclosures in § 1005.20(a)(4)(iii) are not given, may still be excluded from the term "prepaid account," under § 1005.20(b)(4), which excludes gift cards that are not marketed to the general public. The Proposal would clarify that the term "prepaid account" excludes loyalty, award, or promotional cards that meet the criteria in § 1005.20(a)(4) but for which the requisite disclosures are not provided, if the cards are not marketed to the general public.
- **Prepaid accounts that are the only means of access to funds:** The Final Rule requires financial institutions to comply with Regulation E's requirements for unsolicited issuance for prepaid accounts in § 1005.5(b), unless an exception applies. Under § 1005(b), a financial institution may send an unsolicited access device to a consumer if, among other things, the institution explains how the consumer may dispose of an unwanted device. Some financial institutions were concerned that the reference to disposing of an unwanted device means that, for prepaid products that are the only means of access to a consumer's funds, the issuer would have to provide another means of access besides the unsolicited device. The Proposal would clarify that if the consumer's funds are only available through a prepaid account (e.g., prepaid accounts for use by prisons in work release programs), the financial institution need not provide another means of accessing the funds, but the institution must inform the consumer that there is no other way to access the funds if the consumer disposes of the device.

The Proposal also addresses the Final Rule's requirements for pre-acquisition disclosures under § 1005.18(b) of Regulation E when the prepaid account is the only means to access funds. The Final Rule generally requires a financial institution to provide the short- and long-form

disclosures before the consumer acquires a prepaid account. Financial institutions raised practical concerns with this requirement when a prepaid account is the only means offered for receiving funds. In such cases, the Proposal would permit financial institutions to provide the required pre-acquisition disclosures at the time that the consumer receives the prepaid account.

- **Pre-acquisition disclosures:** The Final Rule requires financial institutions to provide short- and long-form disclosures before a consumer acquires a prepaid account, unless the account is acquired in retail locations or by telephone. Financial institutions raised a variety of concerns about the pre-acquisition disclosures. In response, the Bureau has proposed the following changes or clarifications to the Final Rule's revisions to Regulation E's disclosure requirements:
  - For prepaid accounts that qualify for the retail location exception, a financial institution may provide the long-form disclosures electronically without complying with the E-SIGN Act *if* the long-form disclosures are not included within the packaging, and the financial institution is not otherwise communicating with the consumer regarding account-related information within 30 days of obtaining the consumer's contact information. Under the Proposal, the financial institution need not provide the long-form disclosure after the consumer acquires the prepaid account *if* the financial institution does not obtain the consumer's contact information. However, the financial institution must provide the long form information as part of the initial disclosures under Regulation E § 1005.7.
  - For the short form, when an additional fee must be disclosed, and that fee has more than two variations (e.g., different charges for regular bill pay based on whether ACH or a paper check is used as well as charges for expedited bill pay), the Proposal would allow financial institutions to consolidate those variations into two categories and disclose the two categories' names (e.g., regular or expedited delivery), and the associated fee amounts in a format substantially similar to that used to disclose two-tier fees.
  - The Proposal clarifies that pre-acquisition disclosures may be provided in writing prior to acquisition even when the consumer later acquires the prepaid account through electronic means or orally by telephone.
  - Under the Proposal, a financial institution would not have to provide the pre-acquisition disclosures in a foreign language, for payroll cards and government benefit accounts, when the foreign language is only offered by a third-party real-time language interpretation service.
- **Submission of prepaid account agreements:** Under the Final Rule, issuers must submit prepaid account agreements to the CFPB no later than 30 days after the issuer offers, amends, or ceases to offer a prepaid account agreement. The Proposal makes several changes to the requirements for submitting prepaid account agreements to the CFPB, including permitting prepaid account issuers to delay submitting a change in names of other relevant parties (e.g., employers for a payroll card agreement) until the issuer submits other agreement changes; and to submit the

short form and long form disclosures as separate addenda to an agreement.

- **Effective date:** The CFPB is not proposing to further revise the general effective date beyond April 1, 2018, but it is soliciting comments on whether a further delay would be appropriate in light of the proposed revisions discussed above.
- **Safe Harbor for Early Compliance:** The CFPB is soliciting comments on whether the Final Rule conflicts with current federal regulations governing prepaid accounts, such that early compliance with the Final Rule would expose financial institutions to liability. If such conflicts exist, the CFPB is soliciting comments on whether a safe harbor provision would be necessary and appropriate.

If you have questions about the ruling or other related issues, visit our [Credit, Debit & Prepaid Cards](#) or [Consumer Financial Protection Bureau](#) practice pages for more information, or contact a Buckley Sandler attorney with whom you have worked in the past.