

Comment Call (15 – 2)

CFPB: Prepaid Accounts under Electronic Funds Transfer Act and the Truth in Lending Act

Impact: Federal and State Chartered Credit Unions

Relevant Department: CEO, COO, Lending

Priority: *Medium*

Background

A 2013 study by the Board of Governors of the Federal Reserve System (the Board) reported that compared with noncash payments such as credit, debit, automated clearing house (ACH), and check, prepaid card payments increased at the fastest rate from 2009 to 2012.

The Consumer Financial Protection Bureau (CFPB), in response to this study is issuing the proposed rule that applies to prepaid accounts (including general purpose reloadable cards as well as other types of prepaid accounts such as digital wallets) that are offered to consumers. Prepaid products are consumer accounts typically loaded with funds by a consumer or by a third party, such as an employer. Consumers can use these products to make payments, store funds, get cash at ATMs, receive direct deposits, and send funds to other consumers. Prepaid products are often bought at retail stores or online. Prepaid products are amongst the fastest growing types of consumer financial products in the United States; the total dollar value loaded onto general purpose reloadable cards is expected to grow to nearly \$100 billion through 2014.

The proposal would apply a number of specific federal consumer protections to broad swaths of prepaid markets for the first time. The proposal would cover traditional plastic prepaid cards, many of which are general purpose reloadable cards. In addition, the proposal would cover mobile and electronic prepaid accounts that can store funds. The prepaid products covered by the proposal also include: payroll cards; certain federal, state, and local government benefit cards such as those used to distribute unemployment benefits, child support and pension payments; student financial aid disbursement cards; tax refund cards; and peer-to-peer payment products.

The proposal can be found [here](#).

Comments must be received on or before March 23, 2015.

Summary of Proposed Rule and Request for Comment

The CFPB proposal would dramatically broaden the scope of the CFPB's prepaid regulation. The Supplementary Information accompanying the proposal states:

- The CFPB “believes that the features of non-GPR (general purpose reloadable) card prepaid products as well as the ways consumers can and do use those products warrant their inclusion as prepaid accounts,” because, for example, “inclusion aligns appropriately with the purposes of the

Electronic Funds Transfer Act and many consumer snow use other types of prepaid products in the same ways and to fill the same needs as they did payroll card accounts; and

- The CFPB believes “that all prepaid products should be considered consumer asset accounts subject to the Electronic Funds Transfer Act and Regulation E.”

Under the Proposed Rule the term “prepaid account” would include the following:

- Payroll cards;
- Certain federal, state and local government benefit cards;
- Student financial aid disbursement cards;
- Tax refund cards; and
- Certain peer-to-peer payment products

Specifically, the proposal would revise the definition of “account” under Regulation E to include a “prepaid account.” As such, the term “prepaid account” would include a card, code or other device established primarily for personal, family or household purposes, and not already an “account” under Regulation E, which is:

- Either (i) issued on a prepaid basis to a consumer in a specified amount, or (ii) not issued on a prepaid basis, but capable of being loaded with funds thereafter; and
- Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers.

The term “prepaid account” would not include the following:

- Gift cards, gift certificates, or loyalty, award or promotional gift cards;
- Payroll cards that are used to disburse solely “incentive-based payments” such as employee bonuses; or
- Health Savings Accounts, flexible spending accounts, medical savings accounts or health reimbursement arrangements.

Non-reloadable Accounts and Third-party

The term “prepaid account” would cover both reloadable and non-reloadable prepaid accounts, payroll card accounts, university cards, government benefit accounts and accounts that are not loaded at acquisition but are eligible to be loaded. The proposal also would cover prepaid products even if the funds can only be loaded by a third party, rather than by the consumer (for example insurance cards or cards loaded for consumers receiving workers compensation payments.)

Mobile Wallets

The definition of a prepaid account under the proposal would not be limited to physical cards. The proposal would cover mobile and other electronic prepaid accounts that can store funds. However, a payment product that is only capable of storing a consumer’s payment credentials, such as a digital wallet, would not be covered, provided the digital wallet is incapable of storing funds. Specifically the proposed commentary issued with the proposal rule provides that:

A prepaid account must either be issued on a prepaid basis or be capable of being loaded with funds. This means that the prepaid account must be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product is only capable of storing a consumer’s payment credentials for other accounts but is incapable of having funds store don it, such as product is not a prepaid account. However if a products allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product may be viewed as a “prepaid account.”

The Supplementary Information states that, if a digital wallet “allows a consumer to store funds in it directly, then the digital wallet would be a prepaid account if the other criteria of the proposed definition are also met.” As a result, it appears that the proposal would subject the entire mobile wallet share to new regulations if there is a portion of the wallet that can store funds.

Account Disclosures

Under the CFPB’s proposal, short-form and long form disclosures, consistent in form and substance with model forms provided by the CFPB in the proposed rule, would need to be provided to a consumer prior to account opening/acquisition, except under limited circumstances. These disclosures must be segregated from all other materials and must only contain information that is directly related to the disclosures required under [proposed section 1005.18](#). The proposed rule contains limited exceptions to this pre-acquisition disclosure requirement for certain prepaid accounts sold in retail stores.

Short-form Disclosure Content Requirements

Short-form Disclosure Content Requirements Section 1005.18(b)(2)(i) sets forth the content requirements for the short-form disclosure. The required disclosures would need to be provided, “even when a particular disclosure is not applicable to a specific prepaid account product.” See Comment 18(b)(2)(i)–1 (Regulation E). In other words, even if an issuer does not charge a particular fee to a consumer, the issuer would need to include the fee name on the short-form disclosure and disclose “\$0” as the fee. The amendments to Regulation E would, however, be imposed on financial institutions, as defined in Regulation E.) Prior to listing the fees, and in addition to other required short-form disclosures discussed below, short-form disclosures for government benefit accounts and payroll accounts would need to include a statement that the consumer does not have to accept the government benefit account (or payroll card account) and that a consumer can ask about other ways to obtain the government benefit (or wages or salary) from the government agency (or employer) instead of receiving them via the government benefit (or payroll card) account.

In the top-line portion of the short-form disclosure, the issuer would need to disclose, using substantially similar terminology:

- Periodic fees, if any;
- Per purchase fees, including PIN and signature fees;
- ATM withdrawal fees for both in-network and out-of-network; and
- Cash reload fees

Below the top portion of the disclosure, the issuer would need to disclose:

- ATM balance inquiry fees, for both in-network and out-of-network;
- Customer Service fees;
- Inactivity fees, if any; and
- Up to three “incidence-based” fee disclosures

Each fee must be disclosed in a form substantially similar to the way in which they are set forth in the model forms.

The short-form disclosure would need to include:

- A statement that credit-related fees may apply;
- A statement regarding the number of fees, other than those listed on the short form, that could be imposed upon a consumer;

- A telephone number and the unique URL (no longer than 22 characters) of a Web site that a consumer may use to access the long-form disclosure;
- A statement explaining that the consumer must register the prepaid account with the issuer of a service provider in order for the funds loaded into the account to be protected;
- If the prepaid account product is NOT eligible for FDIC deposit or NCUSIF share insurance, a statement that FDIC deposit insurance or NCUSIF share insurance, as appropriate, does not protect funds loaded into the prepaid account; and
- The URL of the website of the CFPB

Long-form Disclosure Content Requirements

The long-form disclosures for a prepaid product would need to include:

- All fees that may be imposed by the issuer in connection with the prepaid account, including the amount of the fee, and the conditions, if any, under which the fee may be imposed, waived or reduced;
- The disclosures described in Regulation Z (1026.60(a-c)), if, at any point, a credit plan that would be a credit card account may be offered in connection with the prepaid account.
- The telephone number, Web site and mailing address of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a copy of transaction history or to notify the person or office when a consumer believes that an unauthorized electronic fund transfer occurred.
- The NCUA insurance disclosure provided on the short-form disclosure; and
- The URL of the website of the CFPB and a telephone number a consumer can contact and the URL a consumer can visit to submit a complaint related to a prepaid account.
- The issuer may provide the long-form disclosures after a consumer acquires a prepaid account by telephone if the issuer informs the consumer orally pre-acquisition that the information required to be disclosed in the long-form disclosure is available both by telephone and on a website.

The long-form disclosure would have to be provided in a stand-alone document, and such a document would be in addition to the initial disclosures generally required under Regulation E. This will result in duplicative disclosure requirements.

Disclosures on Prepaid Account Access Devices

The name of the issuer and the URL of the website and a telephone number a consumer can use to contact the issuer about the prepaid account would need to be disclosed on each prepaid account access device. If the issuer does not provide a physical access device in connection with a prepaid account, the disclosure would need to appear at the URL or other entry point a consumer must visit to access the prepaid account electronically.

Multiple Service Plan (MSP) Prepaid Account Products

If an issuer offers multiple service plans with different fee schedules for a particular prepaid account product, the information required for the short-form and long-form disclosures would need to be presented for all service plans. Each service plan would need to be identified using terms such as “Pay-as-you-go plan,” “Monthly plan” or “Annual plan.” With respect to incidence-based fees, an issuer would need to consider the frequency with which fees are incurred for each of the plans to determine which three additional fees to disclose.

Billing Statements or Access to Account Information

Under the Proposed Rule, instead of providing periodic statements as required by 12 C.F.R. § 1005.9(b), card issuers and government agencies may make available to the consumer:

- The consumer’s account balance via telephone and at an ATM;

- An 18-month history of the consumer’s account transactions online; and
- An 18-month written history of the consumer’s account transactions in response to an oral or written request.

In contrast, the existing payroll card rule permits access to 60 days of account history as an alternative to periodic statements; thus, the Proposed Rule would significantly expand the period of account history required as an alternative to periodic statements under the payroll card rule.

Under the Proposed Rule periodic statements for a prepaid account, the electronic history of prepaid account transactions, and the written history of prepaid account transactions provided at the request of a consumer would need to disclose:

- The amount of any (and all) fees assessed against the account, whether for electronic fund transfers or otherwise; and
- A summary total of the amount of all fees assessed against the consumer’s prepaid account, the total amount of all deposits to the account and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date. See § 1005.18(c)(3) and (4)

These proposed requirements are similar to the requirement in the Credit Card Accountability Responsibility and Disclosure Act (“CARD Act”) to disclose the total of fees on periodic statements.

Limitations on Liability

The Proposed Rule would extend the liability limitations for unauthorized transfers under the existing payroll card rule (see 12 C.F.R. § 1005.18(c)(3)) and government benefit provisions (see 12 C.F.R. § 1005.15(d)(3)) to other prepaid accounts. Specifically, the Proposed Rule would provide a 60-day period for reporting any unauthorized transfers. The 60-day period would begin on the earlier of:

- The date the consumer electronically accesses the consumer’s account information reflecting the unauthorized transfer; or
- The date the issuer (or government agency) sends the consumer a written history in response to the consumer’s request. See §§ 1005.15(e)(3)(i) and 1005.18(e)(1)(i). An issuer or government agency could comply with this 60-day period by limiting the consumer’s liability for any unauthorized transfer reported by the consumer within 120 days after the transfer was credited to, or debited from, the consumer’s account. (Note that this safe harbor is not expressly granted to government agencies under existing Regulation E.)

Error Resolution

The proposed error resolution time frames and procedures for prepaid accounts in the Proposed Rule are generally the same as those currently in Regulation E. The Proposed Rule includes model language that can be used to satisfy the error-resolution notice requirement: the prepaid account disclosure would need to include contact information for the issuer (telephone number or Web site) and a statement that the consumer can contact the issuer if he or she needs information about “error resolution procedures.”

Provisional Crediting

Notwithstanding concerns about provisional crediting and prepaid card fraud (e.g., involving tax refund cards), the Proposed Rule would extend Regulation E’s existing investigation and provisional crediting requirements to prepaid accounts. Specifically, if the issuer is unable to complete its investigation of an alleged error within 10 business days, the issuer would need to provisionally credit the consumer’s account in the amount of the alleged error (12 C.F.R. § 1005.11(c)(2)).

Special Card Provisions and Billing Disputes Involving Prepaid Cards that are also Credit Cards

The Proposed Rule would add a new subsection to Section 1026.13 of Regulation Z to address the applicability of both Regulation E and Regulation Z to prepaid card transactions that involve use of a credit feature that is deemed to be a “credit card” for purposes of the Proposed Rule. In connection with prepaid card transactions that access both funds in a prepaid card account and a credit feature, the prepaid card issuer must comply with provisions in both Regulation E and Regulation Z.

Amendments to Regulation Z

Currently Section 1026.12(d) of Regulation Z prohibits card issuers, either before or after termination of credit card privileges, from offsetting a cardholder’s indebtedness arising from a consumer credit transaction against “funds of the cardholder held on deposit with the card issuer.” Existing Section 1026.12(d)(3) provides, however, that the general rule on offsets “does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct” the cardholder’s indebtedness from a deposit account held with the issuer. The Proposed Rule would add language to this provision of Regulation Z to clarify how the offset provisions would apply to prepaid accounts with credit features. Specifically, under the Proposed Rule, the CFPB states that the term “periodically” in 12 C.F.R. § 1026.12(d)(3) would mean “no more frequently than once per calendar month.”

Public Posting of Prepaid Account Agreements

Consistent with the rules implementing the CARD Act (12 C.F.R. § 1026.58), an issuer would be required to:

- Make quarterly submissions of its account agreements to the CFPB;
- Post prepaid account agreements to the issuer’s Web site; and
- Comply with a consumer’s request to provide a copy of the consumer’s open account agreement if the relevant agreement is not posted to the issuer’s Web site.

The information that must be submitted to the CFPB is consistent with the rules implementing the CARD Act, except that the issuer also would need to provide the name of the program manager, if any, for each prepaid account agreement. The Internet posting provisions would apply to any “prepaid account,” which would include “payroll card accounts” and “government benefit accounts.” In this regard, the CFPB acknowledges that issuers often negotiate payroll card account products on an employer-by-employer basis. Payroll card account products that differ only with respect to fee information would not constitute separate agreements for purposes of the posting and submission requirements however, if the products differed in other respects, issuers would be obligated to submit and post agreements on an employer-by-employer basis, unless the payroll card account product qualifies for the de minimis or product testing exceptions provided under the Proposal.

Finally, the short-form and long-form disclosures and, consistent with the rules implementing the CARD Act, prepaid account agreements may be provided without regard to the applicable provisions of the E-SIGN Act.

Overdraft and Credit Features

With respect to prepaid accounts that have overdraft services or credit features, the Proposed Rule includes amendments to fundamental definitions and terms under Regulation Z. Many of the proposed amendments, which could have far reaching implications, appear to be aimed at preventing circumvention or evasion of the credit-related restrictions under Regulation Z and Regulation E. The issues identified below are a few of the myriad issues raised by the Proposed Rule

Definition of Credit

In general, prepaid cards that access overdraft services or credit features for a fee would be considered credit cards subject to Regulation Z and its credit card rules. In this regard, the Proposed Rule would

modify the definition of “credit” under Regulation Z to include “an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization,” as well as “a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid.”

Overdraft Services and Prepaid Accounts

As noted above, under the Proposed Rule, prepaid accounts with overdraft services may be considered credit card accounts for purposes of Regulation Z. In other words, the Proposed Rule would amend Regulation Z and Regulation E so that the existing exemptions for overdraft services on traditional deposit accounts would not apply to overdraft services on prepaid accounts. In the Supplementary Information accompanying the Proposed Rule, the CFPB explains that “covering overdraft services in connection with prepaid accounts under Regulation Z aligns with TILA’s purpose...to assure a meaningful disclosure of credit terms” and that the Federal Reserve Board’s “justification of the existing regulatory approach [for deposit accounts with overdraft services] is much less convincing as applied to prepaid accounts.”

The CFPB indicates, however, that the Proposed Rule is not intended to alter existing provisions that apply to deposit account overdraft services. The CFPB notes that it “continues to study deposit account overdraft services and will propose any further enhancements to the existing regulatory framework that it deems appropriate as part of that separate endeavor in accordance with its rulemaking procedures.”

Force-pay Transactions

The Proposed Rule also would cover force-pay transactions. Specifically, the Proposed Rule would provide that “credit” includes “a transaction where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid.”

Accordingly, effectively all prepaid accounts could be impacted because of the inability to control force-pay transactions, which can occur, for example, when a network is offline and uses a stand-in balance or when a merchant does not seek authorization for the full amount of a transaction. While the credit provisions are only triggered if an issuer imposes a fee or charge for such force-pay transactions, if there is a negative balance on the prepaid account, the account fees (i.e., monthly service fees and transaction fees) could be viewed as a charge for a credit feature.

In other words, because it may be difficult to avoid the imposition of charges, such as monthly service fees or transaction fees, when there is a negative balance on the prepaid account, issuers would be at risk of offering a credit feature, thereby triggering the credit card requirements included in the Proposed Rule.

Credit Card Requirements for Prepaid Accounts with Overdraft Services or Credit Features

The credit provisions under the Proposed Rule, which in some respects exceed existing Regulation Z protections applicable to credit card accounts, would include:

- Performing an ability-to-repay analysis;
- Providing monthly periodic statements;
- Requiring a least 21 days to repay amounts associated with a credit feature prior to assessing any late fees, together with a requirement that such fees be “reasonable and proportional” to the account violation;
- Limiting total fees in the first year to no more than 25 percent of the initial credit limit;
- Restricting increases on interest rates applicable to use of a credit feature, unless the cardholder has missed two consecutive payments; and

- Requiring 45-day advance notice of any interest rate increases so that the consumer may cancel the credit feature.

In addition, as noted above, the CFPB has proposed to revise the compulsory use provision of Regulation E. Specifically, under the Proposed Rule, the CFPB would not extend the provision's exception for overdraft services to overdraft features associated with prepaid accounts. These proposed changes, together with the CFPB's proposed amendments to Regulation Z, would:

- Require prepaid card issuers to wait 30 days from the time that the consumer registers the prepaid account before offering credit features to the consumer;
- Limit the ability of an issuer to use prepaid funds to repay credit feature amounts; and
- Prohibit issuers from requiring payment within 21 days from the time the periodic statement is mailed.

Estimated Impact on Credit Unions

The CFPB believes that about 16 credit unions will likely be "directly affected" by the prepaid accounts rule because they are issuers. The agency believes that many credit unions that offer prepaid cards and accounts are relying on other institutions through a white-label program, agency relationship, or similar arrangement to provide the prepaid accounts to their members. This is consistent with what we have been hearing during preliminary outreach regarding the prepaid proposal. In the traditional white label model, financial institutions rely upon another institution to issue prepaid accounts, which may be branded with the institution's name. The agency noted that there are a handful of such programs through which banks and credit unions, including some that are small, offer prepaid accounts (typically as a convenience to their customers or members). In addition, data from the June 2014 NCUA Call Report show that about 10.6% of all credit unions offer prepaid cards to their members. Generally, larger credit unions are more likely to offer prepaid accounts. (See page 77,285 of the Federal Register notice.)

Effective Date

The proposed effective date would be nine months after the publication of the agency's final rule for new prepaid account materials. This would include disclosures for newly-manufactured prepaid account materials and disclosures, or other information delivered to consumers online or by telephone. For materials that have already been printed or created prior to the nine-month effective date, the agency proposes a 12-month deadline from the publication of the final rule for all materials to be in full compliance with the final rule, including with disclosure requirements, regardless of when the materials were created

Request for Comment

1. Does your credit union generally support the CFPB's proposed consumer protections for prepaid accounts and cards?
2. Is your credit union currently a prepaid card issuer or does your credit union currently rely on a third party provider program to offer prepaid cards to your members? If your credit union is relying on a third party, please describe any potential impacts to your credit union.
3. On the proposed consumer protections under Regulation E, does your credit union have any comments regarding consumer access to account information, temporary crediting of the disputed amount to the consumers of the financial institution is not able to complete the investigation of an alleged error within 10 business days (i.e., provisional credit), and fraud and lost card protections?
4. Under the proposal, financial institutions have the option of providing periodic statements with information on prepaid accounts or alternatively, making relevant account information readily available to the consumer. Do you support this aspect of the proposal? Are there any additional alternative methods that the CFPB should consider?

5. Does your credit union the proposed model disclosures, including the long and short forms? Do you have concerns with the annual reassessment of “incidence-based” fees and reprinting disclosures on an annual basis? Do you have any recommended changes?
6. Also, does your credit union have any comments regarding the proposed posting of the prepaid account agreements online and submission to the CFPB for posting on its website?
7. Does your credit union have comments regarding the application of Regulation Z to prepaid accounts that offer credit? Do you have any broader concerns about the CFPB’s treatment of overdrafts as credit under Regulation Z?
8. Further, do you support the proposed disclosures regarding whether a prepaid account offers share or deposit insurance?
9. Would the proposed effective date of nine months after the publication of the final rule provide sufficient time for your credit union to comply with the rule on new prepaid account materials, or information delivered online or by telephone? Would twelve months after publication provide sufficient time for ALL prepaid materials to be in compliance regardless of when the materials were created?
10. Does your credit union have any comments or areas of concern you would like to see addressed?

Comment Letters

Please submit Comment Letter to:

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

Comments should be identified by: Docket No. CFPB-2014-0031 or RIN 3170-AA22

Electronically: <http://www.regulations.gov> Follow the instructions for submitting comments

E-mail: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB – 2014-0031 and/or RIN 3170-AA22 in the subject line of the email

Please submit to the MCUL a copy of your response to the attention of:

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We Appreciate Your Response

