



The CFPB's Notice of Proposed Rulemaking on Prepaid Accounts

**12 CFR Parts 1005 and 1026
Issued November 13, 2014**

Agenda

Introduction

Topics

- Definitions – Judie Rinearson
- Payroll Card Accounts – Margo Strahlberg
- Government Benefit Accounts – Margo Strahlberg
- Disclosures – Reed White
- Posting of Terms at CFPB – Judie Rinearson
- Error Resolution and Limits on Liability – Dan Wheeler
- Credit Issues – John ReVeal & Seyi Iwarere

Conclusion – Timing & Effective dates

Judie Rinearson

DEFINITIONS

Definitions

- Bona fide trust account – exemption maintained

§ 1005.2(b)(1) Account means a demand deposit (checking), savings or other consumer asset account...

§ 1005.2(b)(2) The term includes a “payroll card account” ...

§ 1005.2(b)(3) The term includes a “prepaid account.”

- (i) A prepaid account is a card, code, or other device, not otherwise an account under paragraph (b)(1) of this section, which is established primarily for personal, family, or household purposes, and which:

Definition of prepaid account

And which...

- (A) is **either** issued on a prepaid basis to a consumer in a specified amount **or not issued on a prepaid basis but capable of being loaded with funds thereafter**; [AND]
- (B) is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, **[or]** usable at automated teller machines, **or** usable for person-to-person transfers; **and**

Definition of prepaid account

And *is not*

- (1) a gift certificate as defined in § 1005.20(a)(1) and (b);
- (2) a store gift card as defined in § 1005.20(a)(2) and (b);
- (3) a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or
- (4) a general-use prepaid card as defined in § 1005.20(a)(3) and (b) **that is both marketed and labeled as a gift card or gift certificate.**

Definition of prepaid account

- (ii) The term “prepaid account” includes a “payroll card account,” which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.
- (iii) The term “prepaid account” includes a “government benefit account,” as defined in § 1005.15(a)(2).
- (iv) The term “prepaid account” does not include a health savings account, flexible spending account, medical savings account, or a health reimbursement arrangement.

Definition of prepaid account

- *Not required to be reloadable.* Prepaid accounts need not be reloadable by the consumer or a third party.
- *Person-to-person transfers.* A prepaid account capable of person-to-person transfers is an account that allows a consumer to send funds by electronic fund transfer to another consumer or business. **An account may qualify as a prepaid account if it permits person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at automated teller machines.**

Definition of prepaid account

- Comment 20(b)(2)-2 describes, in part, a network-branded general purpose reloadable card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or internet advertisement, or on signage as “the perfect gift” during the holiday season... **For purposes of § 1005.2(b)(3)(i)(C), however, such a product would not be considered to be both marketed and labeled as a gift card or gift certificate and thus would be covered by the definition of prepaid account.**

Definition of prepaid account

With these examples, the Bureau seeks to make clear that **it does not intend to extend the proposed definition of prepaid account to a product that can never store funds.** To the extent that a digital wallet, for example, merely stores payment credentials (e.g., a consumer's bank account or payment card information), rather than storing the funds themselves, the digital wallet would not be considered a prepaid account under the proposed rule. If, however, 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.

Definition of prepaid account

- The Bureau proposes **not to limit its definition to prepaid accounts that are reloadable**
 - The Bureau believes that it would be inappropriate to exclude a product from the definition of prepaid account based on whether it can be reloaded or who can (or cannot) load funds into the account
 - Second, the Bureau does not believe that non-reloadable prepaid products should have fewer protections than reloadable products.
 - Third, if the Bureau excluded non-reloadable cards from the definition of prepaid account, a provider *intent on evading Regulation E* could issue non-reloadable cards repeatedly to the same consumer instead of reloading a covered reloadable card.

Definition of prepaid account

- The Bureau's decision to include P2P payments - -
 - The Bureau has identified an increasing number of products that allow consumers to make P2P or P2B payments without using a third-party branded payment network. These services ... allow consumers to send money to other consumers and businesses.
 - Unlike many limited-use prepaid products such as university card, P2P products do not have such a limitation. Indeed, the **P2P model is not very different from a card association that contracts with unaffiliated merchants.**
 - Note, of course, that a P2P payment product must satisfy the other requirements of the proposed rule to be a prepaid account, including that the product be **capable of storing funds.**

Margo Strahlberg

PAYROLL CARD & GOVERNMENT BENEFIT ACCOUNTS

What are Payroll Card Accounts?

- “Prepaid Account” explicitly includes “payroll card accounts” (§ 1005.2(b)(3)(ii))
- “Payroll Card Account” is “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.”

What are not Payroll Card Accounts?

- Certain employment-related cards, such as those:
 - Used solely to disburse incentive-based payments
 - E.g., bonus payments
 - But not cards that represent the consumer's primary source of salary or other compensation, e.g. commissions
 - Used solely to make disbursements unrelated to compensation
 - E.g., petty cash reimbursements or travel per diem payments
 - Used in isolated instances to which an employer typically does not make recurring payments
 - E.g., final payments or in emergency situations
- Note: The above exempt cards may still constitute prepaid accounts generally!

Payroll Card Accounts – Current Reg E Requirements

- Disclosures
- Prohibition against compulsory use
- Access to account history
 - Periodic statements in writing, or
 - Make available: (1) the account balance, through a readily- available telephone line; (2) an electronic history of account transactions that covers at least 60 days; and (3) a written history of account transactions that covers at least 60 days upon request.
- Limited liability for unauthorized transfers
- Error resolution rights

Payroll Card Accounts – Proposed Reg E Requirements

- Pre-Acquisition Disclosure Requirements (§ 1005.18(b)(2)(i) & (ii))
 - Must provide both the short- and long-form disclosures prior to the acquisition of the payroll card account.
 - Pre-acquisition means at time the employee agrees to receive wages via payroll card
 - Post-acquisition would be if payroll card and disclosures are delivered at the end of the first pay period
- Note: Payroll card accounts offered to employees working in a retail store are not eligible for the carve out for prepaid accounts acquired in a retail store (§ 1005.18(b)(1)(ii)); such employees must receive both the short- and long-form disclosures pre-acquisition.

Payroll Card Accounts – Proposed Reg E Requirements

- Payroll Card Account Notices
 - Non-Compulsory Use Disclosure (§ 1005.18(b)(2)(i)(A))
 - A statement that a consumer does not have to accept the payroll card account
 - A statement that a consumer can ask about other methods to receive wages/salary
 - Statements are required to be prominently placed at the top of the pre-acquisition short-form disclosure
 - See Model Form A-10(b) (Appendix A)
 - Note: Disclosure must appear in at least 8 point font (or the corresponding pixel size) and appear no larger than certain fee disclosures (§ 1005.18 (b)(2)(i)(B)(1) through (4))

Payroll Card Accounts – Proposed Reg E Requirements

- Access to account history – same for all “prepaid accounts”
 - Periodic statements in writing, or
 - Must include (i) amount of any fees assessed against a prepaid account, whether for electronic fund transfers or otherwise and (ii) summary totals of fees, deposits and debits
 - Make available:
 - (1) the account balance, through a readily- available telephone line at no cost to the consumer (at a minimum available during standard business hours);
 - (2) an electronic history of account transactions that covers at least **18 months** at no cost to the consumer; and
 - (3) a written history of account transactions that covers at least **18 months** upon request.

Payroll Card Accounts – Proposed Reg E Requirements

- Written account transaction history
 - CFPB expects it to be sent the next business day or soon after an oral or written request is received
 - A financial institution may assess a fee for responding to subsequent requests made in a single calendar month (Comment 18(c)-3)
 - A financial institution may provide fewer than 18 months of written account transaction history if:
 - The consumer requests a shorter period of time.
 - The prepaid account has been open for fewer than 18 months
 - If a prepaid account is closed or becomes inactive, must continue to provide at least 18 months of account history from the date the request is received.
- Note: The term “financial institution” includes employers and third party providers, such as program managers

Payroll Card Accounts – Proposed Reg E Requirements

- Limited liability for unauthorized transfers and error resolution rights
 - Proposed to apply to all prepaid accounts (not just payroll cards), but with certain modifications, including:
 - Initial disclosures
 - Access of the account information
 - Error resolution procedures
 - Annual Disclosures
 - Error resolution
 - Timing to respond

What are Government Benefit Accounts?

- “Prepaid account” explicitly includes government benefit accounts (§ 1005.2(b)(3)(iii))
- A “government benefit account” is an account established by a government agency for distributing government benefits to a consumer electronically
 - Does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency

Government Benefit Accounts – Proposed Reg E Requirements

- Pre-Acquisition Disclosure Requirements (§ 1005.15(c)(1) and (2))
 - Same as those applicable to other prepaid accounts (§ 1005.18(b))
 - Pre-acquisition – at time the consumer receives benefits eligibility information from the relevant government agency
 - Post-acquisition – consumer does not receive the disclosures to review until receiving the government benefit card
 - Note: The pre-acquisition disclosures and notice may be given in the same process or appointment during which the consumer acquires or agrees to acquire a government benefit account

See Model Form A-10(a) of Appendix A for model short-form

See Sample Form A-10(e) of Appendix A for sample long-form

Government Benefit Accounts – Proposed Reg E Requirements

- Government Benefit Account Notices (§ 1005.15)
 - Same non-compulsory use disclosure as with respect to payroll cards (§ 1005.15(c)(2))
 - A statement that a consumer (i) does not have to accept the government benefit account and (ii) can ask about other methods to receive benefits
 - Statements are required to be prominently placed at the top of the pre-acquisition short-form disclosure

See Model Form A-10(a) (Appendix A)

Government Benefit Accounts – Proposed Reg E Requirements

- Access to account history
 - Periodic statements in writing, or
 - Must include (i) amount of any fees assessed against a prepaid account, whether for electronic fund transfers or otherwise and (ii) summary totals of fees, deposits and debits
 - Make available:
 - (1) the account balance, through a readily- available telephone line **and at a terminal (e.g., a balance-inquiry terminal, or providing the balance on a terminal receipt)** at no cost to the consumer (at a minimum available during standard business hours);
 - (2) an electronic history of account transactions that covers at least **18 months** at no cost to the consumer; and
 - (3) a written history of account transactions that covers at least **18 months** upon request.

Reed White

DISCLOSURES

Initial Disclosures – Current Reg. E

- Current Law Regarding Initial Disclosures

- Reg. E (12 CFR § 1005.7)

- Disclosures required by financial institutions “at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer.”
 - (b)(1) Liability of consumer
 - (b)(2) Telephone and number
 - (b)(3) Business days
 - (b)(4) Types of transfers and limitations on frequency and dollar amount
 - (b)(5) Fees
 - (b)(6) Consumer’s rights to receipts and periodic statements, and notices regarding pre-authorized transfers
 - (b)(7) Stop payment
 - (b)(8) Liability of institution
 - (b)(9) Confidentiality
 - (b)(10) Error resolution
 - (b)(11) ATM fees

Initial Disclosures – Current Reg. E

- The general provisions of § 1005.7 were modified for use with other types of accounts or in other contexts
 - Certain service providers [§ 1005.14(b)(1)]
 - Certain government agencies that do not provide periodic EFT statements [§ 1005.15(d)]
 - ATM operators [§ 1005.16]
 - Overdrafts [§ 1005.17(d)]
 - Payroll cards [§ 1005.18(c)(1)]
 - Remittance transfers [§ 1005.31]

Initial Disclosures - Proposed

- Proposed § 1005.18(b) implements the Electronic Funds Transfer Act disclosure requirements for prepaid accounts
- The disclosure provisions of § 1005.18(b) are in addition to the existing disclosures required by § 1005.7
 - The goal is to facilitate easy comparison through transparent fee disclosure
- Section 1005.18(b) requires two forms of disclosure
 - “Short form”
 - “Long form”

Initial Disclosures – Short Form Samples

- Model Forms A-10(c) and (d) – with and without overdraft

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.

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*

No overdraft or 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 Disclosures – Short Form

- Short form disclosure

- Short form disclosure samples → Appendix A Model Forms A-10(b) through (d)
- Static format that sets forth certain fees (as chosen by the CFPB) for all prepaid account products
 - Required even if such fees are \$0 or relate to features not offered for a particular prepaid account product
 - Provides a consistent format across all potential accounts; think FDA food labels
- Larger font
 - Periodic fees, per-purchase fee, ATM withdrawal fee, and cash reload fee
- Smaller font
 - Statement regarding overdraft fees (if applicable)
 - ATM balance inquiry fee, customer service fee, inactivity fee
 - “Incidence based” fees - up to three additional fees typically incurred
 - Must be reviewed annually by financial institution; any required updates must be made within 90 days
 - Prevents financial institutions from manipulating fee structure
 - Statement regarding the number of other fees that may apply (as disclosed on the “long form”)
 - Telephone number and website to access the long form disclosure
 - Statement regarding registration
 - Statement regarding FDIC/NCUSIF insurance
 - CFPB website URL

Initial Disclosures – Short Form

- Short form disclosure (cont.)
 - As applied to applicable purchase points
 - By telephone
 - Customer must either be directed to a URL that contains an electronic copy of the disclosure or be given the option to hear the fees over the phone
 - » As long as the customer is provided with the URL or the option to hear the disclosure, the sales transaction may proceed
 - Online
 - Customer must be provided an electronic copy of the disclosure
 - Retail
 - Disclosure must be printed on the packaging

Initial Disclosures – Long Form Sample

- Model Form A-10(e)

Fee description	Amount	Details
Get started		
Card purchase fee	\$3.95	
Monthly usage		
Monthly fee	\$4.95	Charge waived with direct deposit or in any billing cycle when you load at least \$1,000 or have at least 30 qualifying purchases posted to your account.
Add money		
Direct deposit	\$0	
Cash reload	\$2.00	Additional reload network fees may apply.
Spend money within the U.S.		
Per purchase with PIN	\$0	
Per purchase with signature	\$0	
Online bill pay service by check	\$2.00	Charge for having us send a check to pay a bill on your behalf. Charge waived for paying a bill online.
Get cash		
ATM withdrawal, in-network	\$0	"In Network" refers to the XYZMoney ATM network. Locations can be found at xyzprepaid.com or xyzmoney.com. You will not be charged a fee by XYZ Prepaid Card or the ATM operator.
ATM withdrawal, out-of-network	\$2.00	"Out of Network" refers to all the ATMs outside of the XYZMoney ATM network. You may also be charged a fee by the ATM operator even if you do not complete a transaction.
Bank teller cash withdrawal	\$1.25	
Information		
Customer service	\$1.50	per call
ATM balance inquiry, in-network	\$0	"In Network" refers to the XYZMoney ATM network. Locations can be found at xyzprepaid.com or xyzmoney.com.
ATM balance inquiry, out-of-network	\$1.00	"Out of Network" refers to all the ATMs outside of the XYZMoney ATM network. You may also be charged a fee by the ATM operator even if you do not complete a transaction.
Other		
Replacement card	\$4.00	Card will arrive within 5-7 business days.
Expedited replacement card service	\$25.00	Card will arrive within 2 business days.
Inactivity	\$4.50	You will be charged this fee each month after you have not completed a transaction using your prepaid account for 3 months.
Spend money outside the U.S.		
Each international transaction	3.0%	of total transaction amount
International ATM balance inquiry	\$5.00	This is our fee. You may also be charged a fee by the ATM operator.

This card does not provide [FDIC][NCUSIF] insurance.

Contact XYZ Prepaid Company by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit xyzprepaid.com.

For more info about prepaid cards, visit consumerfinance.gov/prepays. If you have a complaint about prepaid cards, call 1-855-411-3272 or visit consumerfinance.gov/complaint.

Initial Disclosures – Long Form

- Long form disclosure
 - Sample of the required long form disclosure is contained in Appendix A Model Form A-10(e)
 - Lists all fees associated with the prepaid account and more detailed information on how such fees are assessed
 - As applied to applicable purchase points
 - By telephone
 - Direct customer to URL containing an electronic copy of the disclosure
 - Provide disclosure information orally over the phone
 - Mail customer a physical copy of the long form disclosure (if requested)
 - Online
 - Customer must be provided an electronic copy of the disclosure

Initial Disclosures – Long Form

- Long form disclosure (cont.)
 - Retail
 - As long as the sales transaction satisfies three requirements, the long form disclosure can be provided to the consumer after the acquisition
 - » The access device (e.g., card) must be inside packaging material
 - » The *short form* disclosure must be displayed on the exterior of the packaging
 - » The *short form* disclosure must contain a telephone number or URL that provides access to the *long form* disclosure information
 - A bank branch or credit union branch is not a “retail” store
 - » Both long and short form disclosures required pre-acquisition
 - The CFPB conceded that space constraints in a retail environment make it impossible to provide a consumer with long form disclosure prior to acquisition

Initial Disclosures – Required Typeface

- § 1005.18(b)(4) – specific formatting requirements
 - Short form and long form
 - Single, easy-to-read typeface
 - Required tables
 - Black or one color type and printed on a white or other neutral contrasting background whenever practical

Judie Rinearson

POSTING OF TERMS

1005.19 Internet Posting of Prepaid Account Agreements

The Bureau proposes:

- To require prepaid card issuers to submit prepaid account agreements, and any amendments thereto, to the Bureau on a quarterly basis.
- The Bureau will post such agreements on a public Web site established and maintained by the Bureau.
- To require issuers to make prepaid account agreements available to the public on the issuers' own Websites, with certain limited exceptions.

The Goal:

- Similar protections to Reg Z 12 CFR 1026.58 for open-end consumer credit card plans.
- To provide for full, accurate and effective disclosure of the terms of prepaid accounts in a clear and accessible manner.
- To assist consumers understanding of and ability to shop for prepaid accounts, and to understand the costs, benefits and risks associated with the product.
- To gather data regarding the organization, **business conduct, markets and activities** of entities subject to Section 1022(c)(4) of the Dodd Frank Act.

What is the submission requirement?

- An issuer must make quarterly submissions each year.
“Issuer” is defined as “the entity to which a consumer is legally obligated”.
- Each submission must contain: (Section 1005.19(b))
 - Basic issuer identification information
 - The “prepaid account agreements” the issuer “offered to the public” as of the last day of the preceding quarter, that was not already submitted.

“Agreement” is defined as the written documents evidencing the terms of the legal obligation between the issuer and a consumer for a prepaid account.

“Offered to the public” is defined to mean if the issuer solicits applications for or otherwise makes available prepaid accounts that would be subject to that agreement. This is discussed in the commentary to include: prepaid accounts issued by a credit union, payroll cards, government benefits accounts, or disbursements for financial aid/insurance payouts.

What is the submission requirement?

- Must submit any prepaid account agreement that was previously submitted but was “amended”.
 - *“Amends” is defined as a substantive change to the agreement (.e.g., if it alters the rights or obligations of the issuer or consumer under the agreement). Any change in the fee information is deemed to be substantive. (Section 1005.19(a)(2).*
- Must submit notification when a submitted agreement is withdrawn
- The Bureau has the following form requirements for any agreement submitted:
 - Agreement and the fee information **in effect as of the end of the quarter**
 - **No personally identifiable information** relating to any consumer
 - Does NOT need to include: ancillary disclosures required by Federal or state law (privacy policies, E-Sign Act), marketing materials, periodic statements, etc.
 - Must be in a clear and legible font: (i) fee information must be set forth in the agreement or in a single addendum (**all fee information specified in Section 18(b)(2)(ii) must be included**); and (ii) **changes must be integrated into the text** of the agreement or fee addendum as appropriate (a “change -in-terms notice” is not acceptable).

Exceptions

- The requirement is subject to a “**de minimis**” **exception**: If the issuer had fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter, the issuer is not required to submit any prepaid account agreements.
 - “*Open Account*” is defined as a prepaid account (i) with an outstanding balance, (ii) that may be loaded by a consumer, even if the account has no current balance, (iii) the consumer can access credit through a credit plan that would be a credit card account under Reg Z, 12 CFR part 1026 that is offered in connection with a prepaid account; or (iv) a temporarily suspended account (e.g., unauthorized use reported).
- A **product testing exception** provides that an issuer is not required to submit to the Bureau an agreement that is (i) offered as part of a product test to a limited group of consumers for a limited period of time, (ii) is used for few than 3,000 open prepaid accounts; and (iii) is not offered to the public other than in connection with such product test.

Internet Posting

- **The Bureau will post the prepaid account agreements submitted on public Web site.**
- **But the ISSUER has a choice. Either:**
 - Post and maintain on its public Web site the same prepaid agreements offered to the public that it is required to submit under this Section: OR
 - Promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request with a means to request by telephone, and the agreement must be sent no later than 5 business days after the issuer receives the consumer's request.
- Except as otherwise provided, issuer does not need to address the E-Sign Act consumer notice and consent requirements when providing electronic agreements pursuant to this Section 19.

Dan Wheeler

ERROR RESOLUTION AND LIMITATION ON LIABILITY

Error resolution disclosures.

Access to account information

- Telephone number
- How to get an electronic account history
- Right to receive a written account history upon request
FORM: Appendix -7(a).

Error resolution notice

See appendix A-7(b)

Annual error resolution notice

- Provide annual error resolution
FORM: appendix A-7(b)

OR

- Include on or with each electronic and written history an abbreviated periodic statement
FORM: appendix A-3(b)

Modified limitations on liability requirements

- The **60-day** period for reporting any unauthorized transfer begins on the earlier of:
 - Date the consumer electronically accesses the consumer's account if unauthorized transfer shows up on the electronic history; OR
 - Date the FI sends a written history of the consumer's account transactions per consumer request -- if the unauthorized transfer shows up in the history
- Alternatively, the FI can limit consumer liability for an unauthorized transfer for any transfer reported within **120** days.

Modified error resolution requirements

Comply with error resolution requirements by the earlier of:

- **60 days** after electronic access to the consumer's account (if the electronic history reflects the alleged error)

OR

- **60 days** after the date the FI sends a written history of the consumer's account transactions per consumer (assuming alleged error shown)

Alternatively, investigate notice of an error if received within **120 days** after the erroneous transfer.

Limitations on liability and error resolution for unverified accounts.

If--

- not a payroll card account or a government benefit account
- risks of not registering a prepaid account disclosed using Appendix A-7(c) notice; and
- FI has not completed its collection of consumer identifying information and identity verification for that prepaid account,

Then--the FI is *not* required to comply with the liability limits and error resolution requirements.

But, post-verification, resolve errors in usual manner.

John ReVeal & Seyi Iwarere

CREDIT PROVISIONS

New Definition of Finance Charge

- Regulation Z adds a new definition of finance charge, which is important for purposes of determining when a prepaid card or account number is a credit card:

Any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.

New Definition of “account number where extensions of credit are permitted to be deposited directly...”

This can only be understood by also knowing the definition of “account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor,” which means an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

In other words, it is no longer possible to decouple a credit plan from a prepaid card and avoid the card being treated as a credit card if the consumer can only load credit advances to a prepaid card.

1026.4(c) fees

Regulation Z has always included a list of charges in 1026.4(c) that are not finance charges (the “1026.4(c) fees”). Those exceptions are narrowed by the Proposal with respect to prepaid cards, so now would include:

1. Monthly or other periodic fees for a prepaid account if credit can be accessed by the card or by an account number where the credit advance must be loaded to a prepaid card; and
2. Overdraft fees where credit can be accessed by the card or by an account number where the credit advance must be loaded to a prepaid card. **So as to remove any doubt of the CFPB’s intent, the Proposal also redefines “credit” to include the payment of overdrafts on a prepaid account.**

Definition of Credit Card, Credit Card Account, and Open-end Credit

Certain Regulation Z rules apply by their terms to “credit cards,” while others apply to “credit card accounts under an open-end (not home-secured) consumer credit plan.” Both terms are redefined by the proposed Regulation Z changes. The definition of credit card is changed through the Commentary, so that credit card now includes:

1. Preauthorized checks issued on a prepaid account when the funds are withdrawn at the time of preauthorization using the prepaid account number.
2. Any prepaid card (even if it is only an account number) if it may be used to access credit, unless the credit is not payable in more than 4 installments and is not subject to any finance charge (as newly defined) or any of the 1026.4(c) fees. Note that these 1026.4(c) fees include more than the two fees listed above (periodic and overdraft fees), but also such fees as credit application fees, late fees and apparently credit report fees, among others.
3. Any account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

Credit Card Account Under an Open-End Consumer Credit Plan

The Proposal also redefines “credit card account under an open-end (not home secured) consumer credit plan” to include overdraft lines of credit that are accessed by a prepaid card or account number.

“Open-end credit” also is redefined to include any arrangement where a creditor routinely pays overdrafts in a prepaid account, even if the creditor retains discretion not to pay such transactions. The key is whether the consumer is contractually obligated to repay the funds.

Key Implications

If a prepaid card or prepaid account is also a credit card, the following rules will apply under Regulation Z:

1. Prepaid accounts that are credit cards receive all of the fee limitations applicable to credit cards. This includes:
 - The 25% cap on fees during the first year; and
 - Limits on the amounts of late fees, overlimit fees and NSF fees. 1026.52.
2. Credit card ability to pay rules apply. 1026.51.
3. Credit card rules that require payments to be allocated to higher interest rate transactions first will apply. 1026.53.

Key Implications

4. Rates, fees and charges can be increased only as allowed by Regulation Z. This means, among other things, that increases generally are not allowed during the first year (other than through valid variable rate programs) and increases generally cannot be applied to existing balances. 1026.55.
5. The credit card periodic statement rules must be complied with if the card or account is a credit card. In addition to needing to include all of the information required by 1026.7(b) for credit card account statements:
 - Statements must be mailed at least 21 days before the payment due date; and
 - The card issuer cannot treat a payment as late if received within 21 days after mailing or delivery of the statement. 1026.5(b)(2).
 - Even for a prepaid card that meets the definition of “charge card” due to no periodic rate being used to calculate finance charges, the card issuer still must satisfy these statement requirements.

Key Implications

6. Prepaid cards that are credit cards can be issued only upon request and only after 30 days. The standard Regulation Z rule is that credit cards can be issued only upon the consumer's request. The Proposal prohibits the opening of a credit card account for a consumer holding a prepaid account (or providing a solicitation or application for a credit card account) until at least 30 calendar days after the consumer has registered the prepaid account. 1026.12(a) and (h).
7. Consumers with prepaid cards that are credit cards receive all unauthorized use protections of Regulation Z.
8. The consumer's debt on a credit card cannot be offset against a deposit account. Card issuers may still agree with the consumer to debit a deposit account on a periodic basis to make scheduled payments, but for prepaid cards that are credit cards this can be done no more than once a month. 1026.12(d)(3).

Key Implications

9. The Regulation E error resolution rules will generally apply, instead of the Regulation Z rules, for a credit plan related to a prepaid account where the extension of credit is incident to an electronic fund transfer when the consumer's account is overdrawn. 1026.13(i).
10. The credit card application and solicitation disclosure requirements will apply. 1026.60. They will apply even if the credit is accessed solely by account numbers, unlike the rule for credit card that are not also prepaid cards or accounts.
11. Issuers with 10,000 or more credit card accounts must post the card agreements on the CFPB's web site. 1026.58.

Judie Rinearson

TIMING - COMMENTS

Timing – Comments

- 90 day comment period – Long Enough ?
- Final Rules expected – mid 2015
- Effective date – 9-12 months after publication of Final Rules
- Next step: Comments!

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