

I. OVERVIEW

On October 6, 2016, The Consumer Financial Protection Bureau (CFPB) issued its Final Rule (“Final Rule”) on prepaid accounts.¹ The Final Rule calls for sweeping, comprehensive, and aggressive consumer protections for prepaid accounts generally known as prepaid cards.

Final Rule in Brief

By October 1, 2017, community banks issuing “marketed2” prepaid accounts and products will need to:

- Provide detailed "know before you owe" disclosures;
- Provide easy and free access to account information;
- Limit consumers' losses when funds are stolen or cards lost; and
- Follow credit card rules when offering hybrid prepaid-credit cards.

The Final Rule places emphasis on disclosure requirements, limited liability, error resolution requirements, and credit protections and is nearly identical to that which is required for credit cards.

The Final Rule amends Regulations E (Electronic Fund Transfers) and Z (Truth in Lending) and is effective October 1, 2017.

II. PROVISIONS OF THE FINAL RULE

Rules Application & Exceptions

The Final Rule applies to general purpose reloadable cards that are labeled or marketed as prepaid and can be used at merchant sites or ATMs, person-to-person payment products, mobile wallets, prepaid accounts subject to Reg E and that can hold funds, payroll cards, tax refund cards, and government benefit cards that are not checking accounts, share draft accounts, or negotiable order of withdrawal (NOW) accounts. The Final Rule provides for several exceptions to the definition of a prepaid account, such as, closed-loop gift cards and gift certificates, health and dependent care reimbursement cards, accounts maintained for the distribution of disaster relief payments, and cards with the primary function of conducting closed-loop transactions on U.S. military installations, vessels, or similar government facilities.

¹ Final Rule http://files.consumerfinance.gov/f/documents/20161005_cfpb_Final_Rule_Prepaid_Accounts.pdf

² For purposes of the Final Rule, the term “marketed” means promoting or advertising an account using the term “prepaid.” An account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label “prepaid.”

Disclosures

The Final Rule requires issuing financial institutions to provide "Know Before You Owe" disclosures and includes model forms for complying with these requirements.

The rule requires issuing financial institutions to provide two types of disclosures, "short form" and "long form," before a consumer acquires a prepaid account.

Short Form Disclosures - The short form disclosure sets forth the prepaid account's most important fees and certain other key terms.³ Like most disclosures, if provided in writing, it must be in a format the consumer can keep. The Final Rule includes several model short form disclosures that provide a safe harbor if used accurately and appropriately.

The short-form disclosure must clearly disclose:

- Periodic fees;
- Per purchase fees, such as point-of-sale fees;
- ATM withdrawal fees (in-network and out-of-network fees);
- ATM balance inquiry fees (in-network and out of-network fees);
- Cash reload fees;
- Customer service fees;
- Inactivity fees;
- A statement regarding the number of additional fee types charged (maximum of two);
- A statement regarding the availability of an overdraft credit feature and whether fees apply;
- A statement regarding account registration and depository insurance;
- A link to the CFPB's website to access information about prepaid cards;
- A statement referring the consumer to the long-form disclosure for additional details and conditions for all fees and services; and
- Additional content for payroll card accounts as applicable.

Long Form Disclosures - The long form disclosure provides a table listing all fees associated with the prepaid account, detailed information on how those fees are assessed, and certain other information about the prepaid program. Under the new rule, unless acquired through a retail transaction or orally by telephone, the long-form disclosure must be provided prior to the consumer acquiring a prepaid account.

A sample of both disclosure forms can be found by clicking [Sample Disclosures](#).

³ The Final Rule also requires disclosure of certain information outside but in close proximity to the short form disclosure. See final 12 CFR §1005.18(b)(5).

The Final Rule includes model short form disclosures that offer a safe harbor when used accurately and appropriately. The Final Rule also provides a safe harbor for financial institutions from having to reprint the long form disclosure due to changes in third-party fees or the Regulation Z disclosures.

Foreign Language Disclosures - The Final Rule amends Regulation E to require foreign language short- and long-form disclosures for prepaid accounts if the same foreign language was used during the acquisition of the account. Additionally, a financial institution is required to provide the long-form disclosure in English, upon request, and on its website.⁴

Publicly Available Prepaid Account Agreements

The Final Rule requires issuing financial institutions to submit all prepaid account agreements to the CFPB as well as publicly post on the financial institution's website. The compliance date for submitting account agreements to the CFPB is October 1, 2018.⁵

Overdraft & Credit Features

Per the Final Rule, prepaid cards are considered hybrid prepaid-credit cards (and therefore subject to the credit card provisions in Reg Z) if the cards are linked to a separate credit account or feature such as providing access to credit by establishing a negative balance on the account.

The Final Rule includes the following requirements for prepaid accounts with overdraft credit features that are accessible by hybrid prepaid-credit cards:

- Ability-to-repay - Financial Institutions cannot open a credit card account or increase a credit line related to a prepaid card until it conducts an ability-to-repay analysis.
- Limits on fees - Total fees for prepaid credit products may not exceed 25% of the credit limit during the first year the account is open. Additionally, interest rates on existing balances can only be increased after the consumer has missed consecutive payments and only after the consumer is given a 45-day notice and allows the consumer to close the account during that 45-day window.
- Late Payments - The Final Rule requires financial institutions to allow consumers a 21-day grace period on a prepaid product before a late fee is assessed. Further, the late fee must be "reasonable and proportional."
- Monthly statement - Financial Institutions must provide consumers with prepaid accounts a monthly periodic statement (similar to credit card statements) to include consumers' fees, and if applicable, interest rate, the amounts borrowed and owed, and other key information regarding debt repayment.
- 30-Day Wait Period - Financial institutions must comply with a 30-day wait period before offering to link a credit feature to a prepaid account and obtain the consumer's consent before linking the credit feature to the prepaid account.

⁴ 12 CFR §1005.18(b)(9) Prepaid Accounts Acquired in Foreign Languages

⁵ While the requirement to submit prepaid account agreements to the CFPB is effective October 1, 2018, the requirement to post agreements on websites and the requirement to submit hybrid prepaid-credit agreements to the CFPB is effective October 1, 2017.

Incidental overdrafts are exempted from the definition of “hybrid prepaid-credit cards when: (1) the prepaid card accesses incidental credit in the form of a negative balance on the asset account; (2) the transaction will not cause the prepaid balance to become negative by more than \$10 at the time of the authorization or a delayed load cushion where credit is extended while a load of funds from an asset account is pending; and (3) the financial institution does not have a policy of charging credit-related fees for the credit.⁶

Additional Protections

The Final Rule includes the following additional consumer protections:

- Free Access to Account Information - Financial institutions may have an alternative to providing periodic statements so long as they allow the consumer free and easy access to their prepaid account.
- Error Resolution/Regulation E - The Final Rule requires financial institutions to investigate unauthorized charges and errors reported by the consumer. The requirement includes investigation timeline compliance, provisional crediting, and notice.

Compliance Considerations

- Closed - loop “gift cards” or “gift certificates” are excluded from the definition of prepaid account.
- Open-loop reloadable gift cards which are marketed as “prepaid” fall under the new rules. As such, community banks that sell these prepaid cards should make sure that marketing and advertising materials of the bank or any third-party issuing on the bank’s behalf use explicit terminology to ensure the product does not fall into the prepaid account definition.
- Community banks that issue prepaid cards on behalf of corporate customers for redistribution to the clientele of those customers (e.g. payroll cards and general purpose reloadable cards marketed as part of an affinity relationship), must ensure the corporate customer complies with the Final Rule.
- Community banks that market to or solicit consumers who speak a foreign language should ensure they are prepared to provide disclosures in those languages.

⁶ 12 CFR § 1026.61(a)(4)