

## I. OVERVIEW

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

The 2016 Rule placed 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 2016 Final Rule also amend Regulations E (Electronic Fund Transfers) and Z (Truth in Lending) and was originally effective October 1, 2017.

On June 15, 2017, the CFPB proposed to amend certain provisions of 2016 Final Rule pertaining to error resolution and limitations on liability for unregistered prepaid accounts; application of the 2016 Rule’s credit-related provisions to digital wallets; clarifications for prepaid account disclosures and agreements; and, the effective date. On January 25, 2018, the CFPB finalized changes (“Updated Final Rule”) to the error resolution and digital wallets. The Updated Final Rule also further delayed implementation to April 1, 2019.<sup>2</sup>

### Final Rule in Brief

By April 1, 2019, community banks issuing “marketed” 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, only after the consumer registers the card; and
- Follow credit card rules when offering hybrid prepaid-credit cards.

*Link to the final rule: [Final Prepaid Rule 2018](#)*

## II. PROVISIONS OF THE 2016 FINAL RULE

### Rules Application & Exceptions

The 2016 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 2016 Rule provides for several exceptions to the definition of a prepaid account, such as, closed-loop gift cards and gift

<sup>1</sup> Final Rule [http://files.consumerfinance.gov/f/documents/20161005\\_cfpb\\_Final\\_Rule\\_Prepaid\\_Accounts.pdf](http://files.consumerfinance.gov/f/documents/20161005_cfpb_Final_Rule_Prepaid_Accounts.pdf)

<sup>2</sup> Updated Final Rule [https://files.consumerfinance.gov/f/documents/cfpb\\_prepaid\\_final-rule\\_2018-amendments.pdf](https://files.consumerfinance.gov/f/documents/cfpb_prepaid_final-rule_2018-amendments.pdf)

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-looped transactions on U.S. military installations, vessels, or similar government facilities.

The Updated Final Rule clarifies that loyalty, award, or promotional gift cards that are not marketed to the general public are not covered, regardless of whether they provide disclosures under the Gift Card Rule.<sup>3</sup>

### Disclosures

The 2016 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.<sup>4</sup> Like most disclosures, if provided in writing, it must be in a format the consumer can keep. The 2016 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.

For guidance on preparing the short form disclosure click [Guide to Short Form Disclosure](#)

*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

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<sup>3</sup> 12 CFR 205.20 - Requirements for gift cards and gift certificates.

<sup>4</sup> 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.

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.

*Foreign Language Disclosures* - The 2016 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.<sup>5</sup>

Additional disclosure types can be found by clicking [Sample Disclosures](#).

The Updated Rule address several aspects of these pre-acquisition disclosures by:

- 1) Clarifying when there is no alternative way for the consumer to receive funds from a prepaid account access device (other than a payroll card account or government benefit account), pre-acquisition disclosures may be provided at the time the consumer receives the prepaid account. The disclosures must inform the consumer that there are no other means by which the consumer can receive such funds initially and of the consequences of disposing of the access device.
- 2) Addressing when a consumer receives an *unsolicited access device*. - Regulation E provides that a financial institution may only issue an unsolicited access device to a consumer in accordance with certain requirements. The 2016 Rule did not address situations in which the consumer is given no other option but to receive the disbursement via a prepaid account, such as prison release cards, jury duty cards, and certain types of refund cards. The Updated Final Rule provides that a financial institution can comply with the unsolicited issuance rule by informing the consumer that there is no other way to access funds in the prepaid account if the consumer disposes of the access device.
- 3) Creating an exception from the requirement that pre-acquisition disclosures be provided (i) electronically when the consumer acquires a prepaid account through electronic means and (ii) orally when a consumer acquires a prepaid account orally by telephone. Under the exception, financial institutions are permitted to provide written pre-acquisition disclosures to the consumer prior to acquisition of the prepaid account. New official commentary to Regulation E clarifies that when a financial institution provides pre-acquisition disclosures in writing, it need not also provide such disclosures electronically or orally, even if the account acquisition process is later completed by such means.
- 4) By addressing the 2016 Rule requirement to provide a long form disclosure after a consumer acquires a prepaid account at a retail location. The Updated Final Rule allows institutions to deliver the long form disclosure after acquisition without E-Sign consent, as long as it is not provided inside of the packaging material, and the financial institution does not send written account-related communications to the consumer within 30 days of obtaining their contact information. The Updated Final Rule does not require a financial institution to provide the long form disclosure if it has not obtained the consumer's contact information.

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<sup>5</sup> 12 CFR §1005.18(b)(9) Prepaid Accounts Acquired in Foreign Languages

- 5) Permitting financial institutions to consolidate the disclosure of additional fee types with multiple variations into two fee variation categories, if the names of the two categories and amounts of the fees are disclosed in a format substantially similar to that used to disclose two-tier fees required for ATM balance inquiry fees and customer service fees.
- 6) By clarifying that foreign language pre-acquisition disclosures for payroll card accounts and government benefit accounts are not required where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party, the employer, or the government agency.

#### Publicly Available Prepaid Account Agreements

The 2016 Rule requires issuing financial institutions to submit all prepaid account agreements - including any amendments to such agreements and identifying information about the issuer, the prepaid account program manager, and other relevant parties - to the CFPB as well as publicly post on the financial institution's website. The compliance date for submitting account agreements to the CFPB has been changed from October 1, 2018, to May 1, 2019 pursuant to the Updated Final Rule.

The Updated Final Rule also makes the following additional changes to the Submission of Agreements.:

- 1) Issuers may delay submitting a change in the names of other relevant parties to a prepaid account agreement until the earlier of: (a) the time the issuer submits an amended agreement or changes to other identifying information; or (b) May 1 of each year, for any updates to the list of names of other relevant parties that occurred between the issuer's last submission of relevant party information for that agreement and April 1 of that year.
- 2) Short form and long form disclosures may be provided as separate addenda to the agreement, rather than integrated into the agreement or provided as a single addendum.

#### Overdraft & Credit Features

The Prepaid Rule establishes provisions to be codified under Regulation Z which address hybrid prepaid credit cards, or cards that can access overdraft features offered by the prepaid account issuer, its affiliate, or its business partner. Under the 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 2016 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 2016 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.

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.<sup>6</sup>

The Updated Final Rule addresses the definition of “business partner” under Regulation Z to simplify the Rule’s application to digital wallets. Under the Updated Rule, business arrangements between prepaid account issuers and issuers of traditional credit cards are excluded from coverage under the Rule’s hybrid prepaid-credit card provisions if:

- the prepaid card cannot access credit from the credit card account during a prepaid card transaction without written consent to link the two accounts,
- acquisition the accounts is not conditioned on whether the consumer authorizes such a connection, and
- the parties do not vary certain terms and conditions based on whether the two accounts are linked.

#### Additional Protections

The 2016 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 2016 Rule requires financial institutions to investigate unauthorized charges and errors reported by the consumer. The requirement includes investigation timeline compliance, provisional crediting, and notice. However, the Updated Rule provides that financial

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<sup>6</sup> 12 CFR § 1026.61(a)(4)

institutions are no longer required to resolve errors or limit consumers' liability for unregistered prepaid accounts until **after** the financial institution successfully completes its consumer identification and verification process.