

# Client Alert

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## Members of Congress Recommend Changes to the CFPB's Proposed Prepaid Account Rule

By Rick Fischer, Obrea Poindexter, and Trevor Salter

The comment period to the CFPB's Notice of Proposed Rulemaking for Prepaid Accounts (the "Proposed Rule") closed in March, but 43 Members of Congress (42 Republicans and 1 Democrat) recently sent a [letter](#) to Director Cordray that contains four recommendations for changing the Proposed Rule. Members of Congress explain that prepaid cards are "safe and effective" and point to their use by the U.S. Department of Treasury in disbursing federal benefits. In this context, the Members of Congress state that their recommendations are intended to help maintain a "vibrant prepaid marketplace."

The four recommendations address the scope, implementation deadline, consumer disclosures and overdraft requirements of the Proposed Rule.

### SCOPE OF THE PROPOSED RULE

Members of Congress characterize the scope of the Proposed Rule as "extremely broad" and explicitly criticize the CFPB's decision to include "mobile wallets and person-to-person transfers" ("P2P") within the scope of the Proposed Rule. Instead, the recommendation is that the CFPB only regulate prepaid products that are used as "primary transaction accounts."

As we described in our [Overview](#) of the Proposed Rule, the Proposed Rule only covers digital wallets to the extent that the wallet is capable of storing funds. Therefore, digital wallets that merely store payment credentials, such as Apple Pay and Visa Checkout, should not be regulated under the Proposed Rule. However, accounts that permit P2P transfers *would* be regulated under the Proposed Rule, and the letter is correct in implying that such accounts are not used for transactions more common to debit and credit card accounts.

### IMPLEMENTATION DEADLINE

The letter raises operational concerns that a nine-month compliance timeframe following finalization of the rule for providing new disclosures and compliant packaging is insufficient. The letter calls for the CFPB to extend the implementation deadline from nine months to 24 months.

Although the Proposed Rule provides a nine-month compliance deadline for new products (i.e., those products where the packaging material is printed after the effective date of the final rule), the Proposed Rule provides a slightly longer deadline of 12 months for products where the packaging material is printed prior to the effective date of the final rule. Besides printing new disclosures, prepaid card issuers and program managers also will need time to establish a number of operational processes to comply with requirements relating to error resolution, identification of incidence-based fees, and providing 18 months of account history. The 24-month time period

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recommended in the letter mirrors the CFPB's findings, summarized in the Supplementary Information to the Proposed Rule, regarding the estimated maximum amount of time it would take for stock of a prepaid card to be sold out, but would apply the 24-month time period to the entire rule.

## PRE-ACQUISITION DISCLOSURES

Citing the CFPB's own research, the letter recommends that the CFPB adopt only the "short form" pre-acquisition fee disclosure because consumers do not find the "long form" disclosure helpful when comparing products. Moreover, Members of Congress encourage the CFPB to work with industry stakeholders to "better define" the short form disclosure requirements.

The relationship between the short-form and long-form disclosures, and particularly the disclosures relating to "incidence-based fees," generated a significant amount of comments by industry stakeholders. The CFPB acknowledged in the Supplementary Information to the Proposed Rule that many consumers were "overwhelmed" by all of the information in the long form, but the CFPB nevertheless stated that it wants consumers to have access to all of the fee information in the long form together with the explanatory information for when fees are charged that would not be contained in the short form.

## OVERDRAFT SERVICES

Members of Congress also express concern that the CFPB's proposal to subject overdrafts on prepaid accounts to Regulation Z would result in companies eliminating overdraft services from the market. The letter recommends instead that the CFPB provide "common sense guard rails" protecting consumers while still providing consumers with access to "short-term micro credit (e.g., amounts less than \$150)."

Relatively few prepaid products provide overdraft services today, but many industry stakeholders have expressed concern about the implications of the CFPB's prepaid account overdraft proposal and what it might signal for the CFPB's intentions relating to regulation of overdraft and similar services in other financial products. Although the letter does not provide detail about what "guard rails" the CFPB might consider relating to overdraft services, the letter raises the possibility that there may be an alternative framework, other than the credit card provisions of Regulation Z, for regulating overdraft services.

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