

The CFPB's Final Prepaid Account Rule

A Presentation to the Financial Services Roundtable,
Consumer Working Group

October 13, 2016



FINANCIAL
SERVICES
ROUNDTABLE



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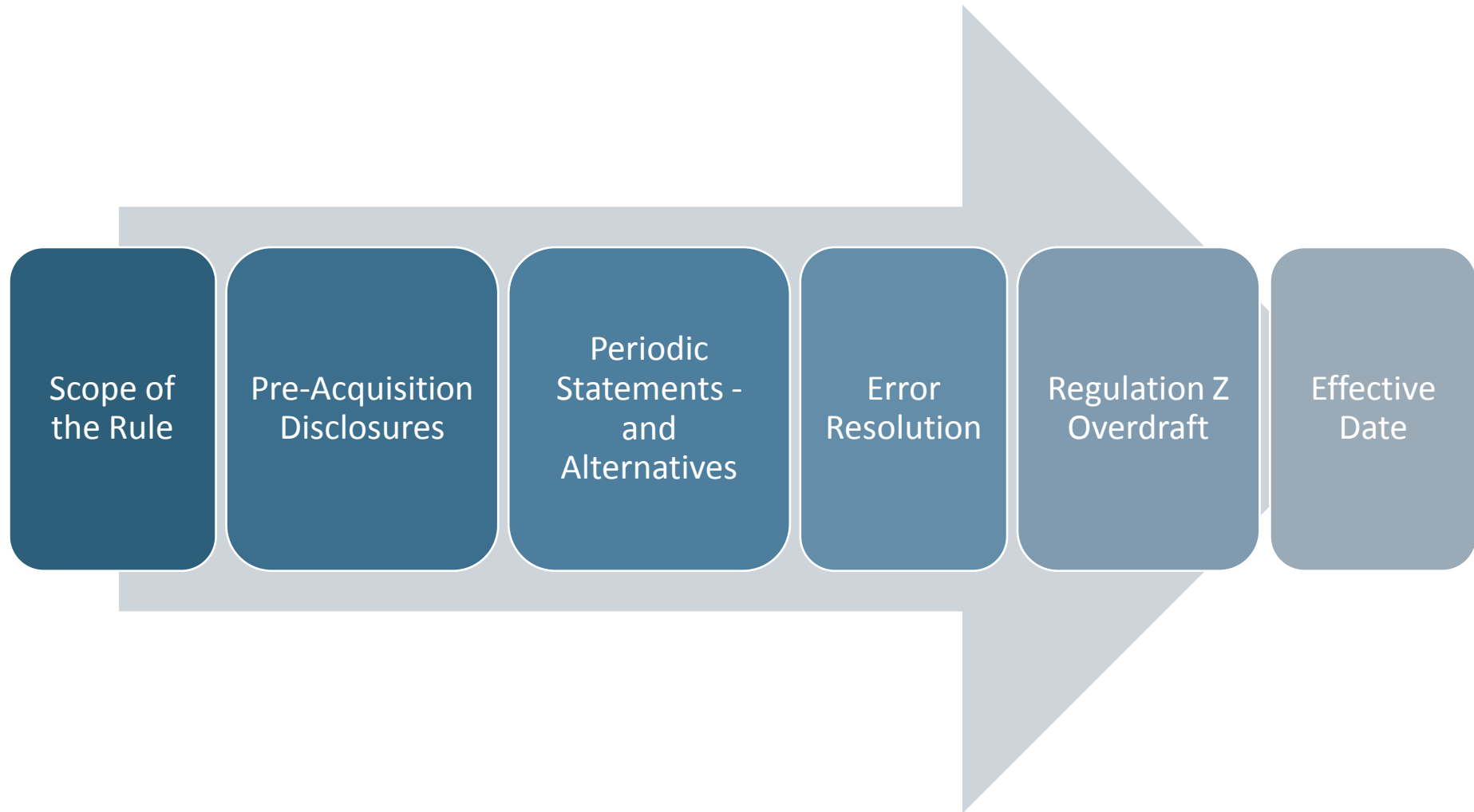


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Overview of Today's Discussion



SCOPE OF THE RULE

Scope of the Rule

- Prepaid account = subset of Reg E “account”
- Revisions and renumbering intended to clarify and address concerns about identifying scope and distinguishing from current Reg E “accounts”
 - **But not** intended to substantively alter scope of proposed prepaid account definition’s coverage
- In general
 - Proposed scope and exceptions remain the same
 - Final rule identifies additional accounts that are (1) covered by the rule and (2) excluded from the rule



Scope of the Rule – Prepaid Accounts

- **What's the same?**
 - Payroll accounts, Government benefit accounts
- **What's different?**
 - An account (1) issued on a prepaid basis or capable of being loaded with funds after issuance, (2) **whose primary function is to conduct transactions with** multiple, unaffiliated merchants, at ATMs, or for P2P transfers, and (3) **is not a checking account, share draft account, or negotiable order of withdrawal account**

Bureau Rationale:

- Focus on the product offerings, not consumer use
- Intended to avoid over-inclusion of current Reg E accounts (e.g., brokerage accounts, savings accounts) and limited function products (reload packs)
- Based on nature of account, not the access device

Scope of the Rule – Prepaid Accounts

- **What's new?**
 - Marketed and labeled as “prepaid” and usable at multiple, unaffiliated merchants or ATMs
 - Similar to marketing and labeling of gift cards/certificates (Reg E, Comment 20(b)(2)-2)



Bureau Rationale: If the card is marketed as “prepaid,” consumers will expect same disclosures and protections afforded to a prepaid account under Regulation E

Scope of the Rule – Exceptions

- **Exceptions as proposed**
 - Gift certificates; store gift cards; loyalty, award and promo gift cards
 - General-use prepaid cards that are marketed and labeled as a gift card or gift certificate
- **Exceptions as proposed, with some revision**
 - Health savings, flexible spending and medical savings accounts, and health reimbursement arrangements PLUS dependent care assistance program, or transit or parking reimbursement arrangement

Bureau Rationale: These accounts are “fundamentally different” from other prepaid accounts covered by the rule, warrant express exclusion

Scope of the Rule - Exceptions

▪ **New Exceptions**

- Qualified disaster relief payments (defined by IRS) established directly or indirectly by third-party
 - *Urgency of need outweighs regulatory protections (burden)*
- The “person-to-person functionality of an account” established by US government whose “primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities” (e.g., embassies, consulates)
 - *Exempts P2P functionality on Eagle Cash, Navy Cash/Marine Cash Cards*
- Needs-tested benefits in a program established by state or local law or administered by state or local agency
 - *Clarifies exclusion of such program from both government benefits account and prepaid account*

PRE-ACQUISITION DISCLOSURES

Pre-acquisition Disclosures Overview

- Prior to acquisition, certain information must be provided in short and long form
 - Short form disclosure must contain *“key” information*
 - Close proximity to short form disclosure: acquisition-related information
 - Long form disclosure must contain *all fees* associated with the prepaid account
- “Acquisition”: purchasing, opening, or choosing to be paid via a prepaid account
- Depending on method of acquisition, disclosure must be provided “in writing,” “in electronic form,” or “orally”

Short Form Disclosures

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$5.99[†]	\$0	\$0 in-network \$1.99 out-of-network	\$3.99*

ATM balance inquiry (in-network or out-of-network)	\$0 or \$0.50
Customer service (automated or live agent)	\$0 or \$0.50* per call
Inactivity (after 12 months with no transactions)	\$1.00 per month

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	\$0.50 or \$1.00
[Additional fee type]	\$3.00

[†] No monthly fee with direct deposit or 30 transactions per month.

* This fee can be lower depending on how and where this card is used.

You may be offered overdraft/credit after 30 days. Fees would apply.
Register your card for FDIC insurance eligibility and other protections.

For general information about prepaid accounts, visit cfpb.gov/prepaid.
Find details and conditions for all fees and services inside the package,
or call 800-234-5678 or visit xyz.com/prepaid.

Bureau Rationale: Balances “key information” necessary for consumer acquisition and use decisions and the brevity and clarity necessary for comprehension and engagement

Short Form Disclosure: Incidence-Based Fees

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$5.99[†]	\$0	\$0 in-network \$1.99 out-of-network	\$3.99*

ATM balance inquiry (in-network or out-of-network)	\$0 or \$0.50
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Customer service (automated or live agent)	\$0 or \$0.50* per call
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Incidence-based fees:

Two types that generated the highest revenue from consumers in the past 24 months

Disclosures must be updated if the two types have changed in the past 24 months

Bureau Rationale: Updating types and amounts of fees protects against disclosures becoming “ossified and anachronistic”

Long Form Disclosure

List of all fees for XYZ Prepaid Card

All fees	Amount	Details
Get started		
Card purchase	\$3.95	
Monthly usage		
Monthly fee	\$5.99	Monthly fee is waived in any month in which you receive a direct deposit or conduct at least 30 transactions.
Add money		
Direct deposit	\$0.50	
Cash reload	\$3.99	Fees of up to \$3.99 may apply when reloading your card at XYZ reload agents. Locations may be found at xyzbank.com/prepaid/reloads .
Spend money		
Bill payment (regular delivery)	\$0.50	Bill pay available when you log in to your account at xyzbank.com/prepaid/ or using the XYZ Bank mobile app. Regular bill pay transactions will be completed within 3 business days for electronic payments and within approximately 7 days if we have to mail a paper check to pay your bill.
Bill payment (expedited delivery)	\$1.00	Bill pay available when you log in to your account at xyzbank.com/prepaid/ or using the XYZ Bank mobile app. Expedited bill pay transactions will be completed within 1 business day. Electronic payments only.
Get cash		
ATM withdrawal (in-network)	\$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at xyzbank.com/ATMs .
ATM withdrawal (out-of-network)	\$1.99	This is our fee. We will not charge you this fee for your first 3 out-of-network ATM withdrawals each month. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
Information		
Customer service (automated)	\$0	No fee for calling our automated customer service line, including for balance inquiries.
Customer service (live agent)	\$0.50	Per call. First 3 calls per month are free.
ATM balance inquiry (in-network)	\$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at xyzbank.com/ATMs .
ATM balance inquiry (out-of-network)	\$0.50	This is our fee. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator.
Using your card outside the U.S.		
International transaction	3%	Of the U.S. dollar amount of each transaction.
International ATM withdrawal	\$3.00	This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
International ATM balance inquiry	\$2.00	This is our fee. You may also be charged a fee by the ATM operator.
Other		
Inactivity	\$1.00	You will be charged \$1.00 each month after you have not completed a transaction using your card for 12 months.

Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to \$250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See fdic.gov/deposit/deposits/prepaid.html for details.

No overdraft/credit feature.

Contact XYZ Bank by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit xyzbank.com/prepaid.

For general information about prepaid accounts, visit cfpb.gov/prepaid.

If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit cfpb.gov/complaint.

Delivery of long form disclosure can occur after acquisition in limited circumstances—i.e., prepaid accounts acquired at a “retail location” or via telephone

Bureau Rationale: Provides consumers with comprehensive, “straightforward” information about the amount of fees and the circumstances under which such fees may be assessed

PERIODIC STATEMENTS - AND ALTERNATIVES

Periodic Statements – and Alternatives

- **Final Rule:** FIs must either provide periodic statements, or alternatively make available account information
- Periodic statements:
 - Information specified in § 1005.9(b), plus
 - All fees assessed against account, and summary total of fees for prior calendar month and year-to-date
- Account information:
 - Telephone balance check
 - Electronic access to account transactions for previous 12 months
 - Written history of account transactions for previous 24 months, upon request
 - All fees assessed against account, and summary total of fees for prior calendar month and year-to-date

Periodic Statements – and Alternatives

Account information alternatives – significant changes from proposed rule

Proposed Rule: 18 months of electronic or written statements

Final Rule: 12 months of electronic statements; 24 months of written statements

New Addition to Final Rule: No obligation to provide written statements for unverified accounts

Proposed Rule: Statements must include summary totals of fees, debits and deposits

Final Rule: Removed requirement to include summary total of debits and deposits

Bureau Rationale:

- EFTA requires “access to account information” and no reason to exempt prepaid accounts
- Consumers need access in order to manage accounts and manage transactions and fees

ERROR RESOLUTION

Limited Liability

■ Limitations on Liability for Unauthorized Transactions

- No material changes from proposed rule
- First tier liability limit of \$50 if consumer notifies FI within 2 business days of learning of loss or theft
- Second tier liability limit of \$500 if consumer notifies FI more than 2 business days after learning of loss or theft
- Unlimited liability begins:
 - 60 days after consumer accesses prepaid account information through a verified login to a website or mobile application, or is sent a requested written transaction history; or
 - 120 days after transaction was posted to consumer's account



Investigation Process

- **Proposed Rule:** Error resolution procedures (investigation, provisional credit and correction) apply only to verified prepaid accounts
- **Final Rule:** Investigation and correction requirements apply to all prepaid accounts; provisional credit requirement applies only to verified prepaid accounts
 - Consumer must be warned of risks of not registering account if customer identification and verification process is pending

Error Resolution

Bureau Rationale:

- Prepaid accounts are being used as bank account substitutes and should have the same protections
- Unverified accounts present a higher fraud risk and therefore no provisional credit



REGULATION Z OVERDRAFT

Revisions to Regulation Z

■ Sea Change in Regulating Overdraft Transactions

- Regulation Z now regulates overdraft credit in a prepaid account—other than “incidental credit” that is free of certain charges (i.e., credit via a force pay transaction)—through a new regulatory device: *Hybrid Prepaid-Credit Card*.
 - Hybrid Prepaid-Credit Card provides access to the “asset feature” of a prepaid account; and
 - Hybrid Prepaid-Credit Card is a Credit Card subject to Regulation Z with respect to a “covered separate credit feature.”
- Regulation of credit features in connection with a prepaid account are not intended to alter the treatment of overdraft services or products on checking accounts under Regulation Z.
- “Bureau is not intending to revise rules in Regulation Z that apply to overdraft plans accessed by debit cards.”
- *Debit card* is a “card . . . or other single device that may be used from time to time to access an asset account other than a prepaid account”

Bureau Rationale: Ambiguous

Regulating Overdraft Transactions in a Prepaid Account

- Longstanding exclusions from *finance charge* amended so that:
 - Overdraft credit offered in connection with charges in a prepaid account are finance charges; and
 - Participation fees if applied to “a covered separate credit feature accessible by a hybrid prepaid-credit card are finance charges”

Bureau Rationale: Effectuates certain credit card rules to a covered separate credit feature accessible by hybrid prepaid-credit card and to reflect the full cost of credit

Regulating Overdraft Transactions in a Prepaid Account

- *Hybrid Prepaid-Credit Card* is the “single device” that, generally speaking, is capable of access to both a:
 - *Prepaid Account*; and
 - *Covered Separate Credit Feature*
- Covered Separate Credit Feature: Credit drawn or transferred, or authorized to be drawn or transferred, for certain transactions “conducted with the card” or “outside the course of a transaction conducted with the card largely defined by the entity extending the credit”

Bureau Rationale: Consumers benefit from the application of the credit card rules generally for an overdraft feature in a prepaid account

Hybrid Prepaid-Credit Card Covered Under Regulation Z

- Covered Under Regulation Z: Card issuer for a hybrid prepaid-credit card must comply with existing requirements for a credit card, such as those relating to:
 - Account-opening disclosures;
 - Periodic-statement disclosures;
 - Change-in-terms notices;
 - Prompt crediting of payments;
 - Billing-error resolution procedures; and
 - Assessing the consumer’s ability to repay
- Credit Must Be Structured in Account: Credit feature may not emerge as a “negative balance” in the “asset feature.” Instead, card issuer must structure a separate credit account in order to present disclosures under Regulation Z



Bureau Rationale: Promotes transparency to consumers, particularly for periodic statements

Hybrid Prepaid-Credit Card Covered Under Regulation Z



- No Immediate Credit: Unless 30 days expires after the date the “prepaid account has been registered,” a card issuer may not:
 - Open a covered separate credit feature accessible by the hybrid prepaid-credit card;
 - Solicit or provide an application to open such a covered separate credit feature; or
 - Allow an existing credit feature to become accessible to the hybrid prepaid-credit card

Bureau Rationale: Promote a consumer’s informed and voluntary use of credit

Force Pay Transactions

- “Force pay” transactions understood as arising under the card network rules, requiring the prepaid card issuer to honor transactions even if the account has insufficient funds



Bureau Rationale: Consumers could continue to make routine purchases where authorization for a transaction is for an unknown amount

Force Pay Transactions

- Core Elements to Qualify for the Exception:

A. Incidental Credit Transactions: Prepaid account issuer maintains an “established policy and practice” of:

I. Declining to authorize any transaction for which there are insufficient funds in the “asset feature” of the account (i.e., some credit transactions still may be processed, without regard to limits in (II)); or

II. Declining to authorize any such transactions, *except if*:

1. De minimis amount of credit: Asset feature is “negative” by no more than \$10 “at the time of the authorization;” or

2. Incoming funds from another account: EFT instructed or confirmed from a “separate asset account” or receipt of request from the consumer to “load funds . . . from a “separate asset account,” but in either case the transaction has not settled, and the incoming EFT would otherwise cover the negative amount

B. No Fees: Prepaid account issuer may not impose an enumerated fee or charge on the asset feature of the prepaid account

EFFECTIVE DATE

Effective Date



Oct 1, 2017

■ Exceptions:

- Packaging materials previously prepared in the normal course of business
- If FI does not have account information readily accessible by October 1, 2017, then must be fully compliant with:
 - Electronic account transaction history requirement by **October 1, 2018**
 - Written account transaction history requirement by **October 1, 2019**
- Deadline to begin submission of prepaid account agreements to Bureau is **October 1, 2018**; deadline for issuer to post agreements on its website is still **October 1, 2017**

Effective Date

Bureau Rationale:

- Want to ensure that consumers are protected by the final rule as soon as possible and feels that sufficient assistance has been provided in the final rule to allow FIs to meet the effective date
- October 1 deadline will not interfere with holiday season system freezes and peak time demands

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