Everyone who has been following the CFPB’s new prepaid account rule knows the basics by now. In this legal update, we go beyond the headlines and do a deep dive into the rule’s amendments to Regulation E. We discuss the new requirements in detail and explore what they mean for the prepaid industry (and other segments of the payments industry that will be captured by the rule’s broad scope).

This legal update covers the definition of “prepaid account,” the application of traditional Regulation E provisions to those accounts and the complicated new disclosure regime for prepaid accounts. In a subsequent update, we’ll provide a similar deep dive into the rule’s amendments to Regulation Z (the regulation that implements the Truth in Lending Act), which address credit features offered in connection with prepaid accounts and overdrafts.
The Comprehensive Guide to the CFPB Prepaid Account Rule, Part I: The Regulation E Amendments

A favorite way for people in the payments industry to kill time when procrastinating about reading the Consumer Financial Protection Bureau’s (“CFPB” or the “Bureau”) new prepaid account rule (the “Rule”) has been to find units of comparison to put its massive size into context. The release was 1,689 pages (albeit double-spaced). This is comprised of 264 pages of actual rule (including the new official comment provisions) and 1,425 pages of supplementary information.

Believe it or not, this is not the longest rule that the CFPB ever issued. It is 199 pages shorter than the rule on initial mortgage disclosures that the CFPB issued in November 2013. But that doesn’t mean it isn’t long. At 534,377 words, it’s actually longer than Moby Dick (206,052 words), Anna Karenina (349,736), The Brothers Karamazov (364,153), Gone With the Wind (418,053) or the Lord of the Rings trilogy (455,125)—but it falls just shy of War and Peace’s 587,287 words. If you count just the words in the actual regulation text (including the official interpretations)—76,814—it’s still longer than beloved classics like Treasure Island (66,950), The Adventures of Tom Sawyer (68,066), and The Catcher in the Rye (73,404).

Admit it—in school, you might have read a few Cliff’s Notes instead of those actual titles. The teacher said you were cheating yourself because there are no Cliff’s Notes in real life.

Your teacher was wrong. Because in the real world, you have law firm legal updates. And we even tried to capture all the details that will be on the exam.¹

This legal update covers the amendments that the Rule makes to Regulation E, which regulate prepaid accounts. The Rule also amends Regulation Z to regulate credit features offered in connection with prepaid accounts (including negative balances). We will be covering the Regulation Z provisions in a subsequent legal update.

“Prepaid Accounts”

The Rule introduces two new terms of art to Regulation E and Regulation Z: “prepaid accounts” and “hybrid prepaid-credit cards.” Most of the provisions that regulate “prepaid accounts” will be housed in Regulation E, and most of the provisions applicable to hybrid prepaid-credit cards will be in Regulation Z. This legal update discusses the definition of “prepaid account.” Our next legal update on the Regulation Z amendments will discuss the definition of “hybrid prepaid-credit card.”

OVERVIEW

The Rule amends the definition of “account” to provide that the term includes a “prepaid account.” A prepaid account is an account that fits into one of four categories:

- A payroll card account;
- A government benefits account;
- An account (1) that is issued on a prepaid basis in a specified amount or capable of being loaded with funds after issuance; (2) whose primary function is the conduct of
transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers; and (3) that is not a checking account, share draft account, or negotiable order of withdrawal account; or

- An account that is marketed or labeled as “prepaid” and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines.

**THE FOUR CATEGORIES OF PREPAID ACCOUNTS IN DETAIL**

**Payroll Card Account**

“Payroll card accounts” have been subject to Regulation E since 2007. The Bureau did not change the definition of “payroll card account,” so any account that was a payroll card account before the Rule will continue to be a payroll card account after the Rule goes into effect (and vice versa).

**Government Benefits Account**

The term “prepaid account” includes a “government benefits account.” Like payroll card accounts, government benefits accounts were already subject to Regulation E. The definition of government benefits account also has not changed. A government benefits account is “an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but 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.” (As discussed below, needs-tested benefits accounts also are excluded from the general definition of “prepaid account.”)

**General Purpose Prepaid Accounts**

The Rule provides that an account will be a “prepaid account” if (subject to some exclusions, discussed further below) it meets all of the following elements:

- It is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter;
- Its “primary function” is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs or to conduct person-to-person transfers; and
- It is not a checking account, share draft account or negotiable order of withdrawal account.

We will now discuss each of these elements in detail.

**Issued on a Prepaid Basis or Capable of Being Loaded With Funds**

One element is that the account be “issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter.”

Accounts that do not actually store funds will not satisfy this element. The Rule adopts an official interpretation that gives the example of a digital wallet that stores payment credentials for other accounts, but is not capable of having funds stored on it. Such a digital wallet would not be “issued on a prepaid basis” or “capable of being loaded with funds” after issuance. The official interpretation also explains that an account that acts as a “pass-through vehicle,” but that does not hold funds, does not store funds. The official interpretation warns, however, that a product that allows a consumer to store funds before the consumer designates a destination for the funds will be “capable of being loaded with funds.”
In other words:

• If the account just stores payment credentials and funds that never actually hit the account, it is neither “loaded on a prepaid basis” nor capable of being loaded with funds.”

• An account still will not be “capable of being loaded with funds” if funds merely pass through the account. The distinction here appears to be whether the destination for the funds is designated before the funds actually hit the account. If the destination is already designated before the funds hit the account and the funds are relayed to the destination automatically, then it does not appear that the account will be “capable of being loaded with funds” for purposes of the prepaid account rule.

• If funds can hit the account before the destination is designated—i.e., if there is a possibility that funds will reside in the account for an indeterminate period of time—then the account is “capable of being loaded with funds.”

**Primary Function**

An account will be a prepaid account under this part of the definition only if its “primary function” is one of the following: (1) to conduct transactions with multiple, unaffiliated merchants for goods or services; (2) to conduct transactions at ATMs; or (3) to conduct person-to-person transfers.

The “primary function” test was not in the proposed rule. The proposed rule only required that the card, code or device be redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers.

According to an official interpretation added by the Rule, the purpose of the “primary function” element is to exclude accounts that provide “transaction capability” only incidentally. One example that the official interpretation gives of an account that provides this capability incidentally is a brokerage account. “[T]he primary function of a brokerage account,” the interpretation says, “is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers.” (The interpretation does not say whether a network-branded card linked to a brokerage account would change this analysis.) Another example that the interpretation gives is a savings account. The primary purpose of a savings account is to accrue interest on funds held in the account, and restrictions on savings accounts limit the extent to which the consumer can conduct general transactions and withdrawals.

The official interpretation also notes that the “primary purpose” of the account, not the primary purpose of an access device for the account, is what matters. The interpretation gives the example of a prepaid account that can be used at multiple, unaffiliated merchants and that is linked to a student identification card. The primary purpose of the student identification card might be to identify the student and allow non-monetary transactions at the school (e.g., checking out books from the library), but the primary purpose of the account itself is to conduct transactions at multiple, unaffiliated merchants.

The official interpretation also explains that an account will satisfy this element if its primary function is one of the functions listed above, even if the consumer does not actually use the account primarily for any of those functions. The interpretation does not explicitly affirm the
obverse of this—i.e., that an account will not satisfy this element if it provides one of the functions listed above only incidentally, but that function is the primary use to which a particular consumer puts the account.

Not a Checking Account, Share Draft Account or NOW Account

An account is a “prepaid account” under this part of the definition only if the account is not a “checking account, share draft account, or negotiable order of withdrawal account.”

Neither the regulation itself, the official interpretations, nor the supplementary information discusses what constitutes a “checking account.” Many general purpose reloadable card accounts offer check-writing capabilities. Could these accounts qualify as “checking accounts” and thus be excluded from the definition of “prepaid account”?³

Also, what happens if a bank offers a demand deposit account that does not provide the ability to write checks? Would such an account potentially be a “prepaid account”?

Open-Loop Accounts Marketed or Labeled as “Prepaid”

Even if an account is not a payroll account or government benefits account, and does not meet the three elements described above, it will still be a prepaid account if:

- It is marketed or labeled as “prepaid”; and
- It is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines.

This provision in the Rule did not have a direct antecedent in the proposed rule.

An official interpretation added by the Rule says that an account is “marketed or labeled as ‘prepaid’” if the account is promoted or advertised using the term “prepaid.” Although the interpretation does not quite say it, it appears that the actual word “prepaid” must be used in order for the account to be “marketed or labeled as ‘prepaid.’” It does not appear that the use of a synonym like “stored value,” “prefunded,” or “preloaded” will bring the account under this provision.

Because the account must be redeemable upon presentation at multiple, unaffiliated merchants for goods or service or usable at ATMs in order to be a “prepaid account” under this part of the definition, a closed-loop or limited purpose account (such as an account associated with a prepaid telephone card or store gift card) will not qualify as a “prepaid account” even if it is marketed or labeled as “prepaid.”

An official interpretation also clarifies that a product or service must meet the basic definition of “account” in order to be a prepaid account under this prong.

EXCLUSIONS FROM THE DEFINITION OF “PREPAID ACCOUNT”

The definition excludes various kinds of accounts from the definition of prepaid account. These exclusions apply only if the account does not meet the definition of payroll card account or government benefits account. An account that meets the definition of payroll card account or government benefits account will be a prepaid account even if it also falls under one of these exclusions.⁴

Health and Flexible Spending Accounts

The term prepaid account generally excludes an “account that is loaded with funds from a health
savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement.” Although the regulation itself does not define any of the terms in this exclusion, the Rule adds an official interpretation to Regulation E that explains that each term has a precise meaning as defined by other federal laws:

- **Health savings account** means a health savings account as defined in 26 U.S.C. § 223(d);
- **Flexible spending arrangement** means a health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. § 125;
- **Medical savings account** means an Archer MSA as defined in 26 U.S.C. § 220(d);
- **Health reimbursement arrangement** means a health reimbursement arrangement that is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. § 106;
- **Dependent care assistance program** means a dependent care assistance program pursuant to 26 U.S.C. § 129; and
- **Transit or parking reimbursement arrangement** means a qualified transportation fringe benefit provided by an employer pursuant to 26 U.S.C. § 132.

**Disaster Relief Accounts**

Also generally excluded from the term prepaid account is an “account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments.” The regulation itself does not define the term “qualified disaster relief payments,” but an official interpretation says that it means funds made available through a qualified disaster relief program as defined in 26 U.S.C. § 139(b).

**Cards and Certificates Covered by the Gift Card Provisions**

Section 1005.20 of Regulation E contains provisions that regulate gift cards and gift certificates (the “gift card rules”). The Rule excludes most products subject to the gift card rules from the definition of prepaid account (unless a product subject to the gift card rules meets the definition of payroll card account or government benefits account, which is highly unlikely). The Rule completely excludes store gift cards and gift certificates, as defined by the gift card rules from the definition of prepaid account. It also excludes loyalty, award or promotional gift cards, as defined by the gift card rules.

The rule also excludes a general-use prepaid card, as defined in the gift card rules, from the definition of prepaid account, but only if the general-use prepaid card is both marketed and labeled as a gift card or gift certificate. The gift card rules define general-use prepaid card as a card that is “[1] Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and [2] Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.” Most general-use prepaid cards—or, more precisely, the accounts associated with them—would be subject to the prepaid account rules but for this exclusion.

The requirement that the card must be both marketed and labeled as a gift card or gift certificate in order to qualify for this exclusion is nearly the obverse of an exclusion from the gift card rules. The gift card rules do not apply to any card that is “reloadable and not marketed or labeled as a gift card or gift certificate.” However,
this exclusion is not the exact mirror image of the exclusion for general-use prepaid cards under the prepaid account rule, it is possible for a general-use prepaid card to be subject to both the gift card rules and the prepaid account rules.

In order to be exempt from the gift card rules pursuant to this exemption, a general-use prepaid card must be both (1) reloadable and (2) not marketed or labeled as a gift card or gift certificate. A general-use card that is not reloadable will therefore not qualify for this exemption, and will be subject to the gift card rules (unless it qualifies for some other exemption from those rules). However, the prepaid account rules do not exclude nonreloadable accounts (a controversial point that we take up in more detail later). Thus, a nonreloadable general-use prepaid card could be subject to both the gift card rules and the prepaid account rules. Additionally, in order to qualify for the exemption from the gift card rules, a general-use prepaid card may not be either marketed or labeled as a gift card or gift certificate; if it is either marketed or labeled as a gift card or gift certificate, then it loses the exemption. To be exempt from the prepaid account rule, a general-use prepaid card must be both marketed and labeled as a gift card or gift certificate. Thus, if a general-use prepaid card is marketed as a gift card or gift certificate but not labeled as one (or vice versa), then the card will not qualify for the exemption from the gift card rules and also not qualify for the exemption from the prepaid account rules. Unless it qualifies for some other exemption from either sets of rules, it must comply with both sets of rules.

**Needs-Tested Benefits Account**

Finally, the definition of “prepaid account” generally excludes an account that is “established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency, as set forth in” 12 C.F.R. § 1005.15(a)(2). As noted above, these accounts are also excluded from the definition of government benefits account.

**THE MISSING EXCLUSION: NONRELOADABLE CARDS**

As was the case with the proposed rule, the definition of prepaid account is not limited to accounts that are reloadable. Many industry commenters on the proposed rule had encouraged the Bureau to exclude accounts that could not be reloaded. The commenters argued that these accounts are unlikely to be used as substitutes for checking accounts or other transaction accounts covered by Regulation E. Therefore, the commenters argued, it was unnecessary and inappropriate to subject these accounts to the requirements of Regulation E.

The Bureau gave three reasons for including nonreloadable accounts:

- While these accounts are in use, they may be used to conduct a significant portion of a consumer’s transactions or hold a substantial portion of a consumer’s funds;
- Extending protections to all broadly usable prepaid accounts is necessary to avoid consumer confusion as to what protections apply to similar accounts; and
- If the Bureau excluded nonreloadable accounts, “a financial institution could evade the Bureau’s rulemaking on prepaid accounts by issuing non-reloadable cards repeatedly to the same consumer, such as to provide repeated disbursements (e.g., providing a new student loan disbursement card each semester).”

**“Classic” Regulation E Provisions Applicable to Prepaid Accounts**

The rule requires financial institutions that provide prepaid accounts to comply with most of
the provisions of Regulation E applicable to checking accounts, savings accounts, and other consumer asset accounts. A full summary of Regulation E is beyond the scope of this legal update. Here, we focus on the provisions of Regulation E that are modified for prepaid accounts (and a few that the Bureau decided not to modify, notwithstanding the urging of industry commenters to do so).

**COMPULSORY USE**

A general rule under Regulation E is that a financial institution or other person may not “condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers.” There is an exception for “credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.” The Rule amends this provision to provide that the exception “does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card.”

**PROVISIONAL CREDITING**

Regulation E establishes time frames within which a financial institution must investigate errors alleged by a consumer. The general rule is that the financial institution must complete its investigation of an alleged error within ten days. However, a financial institution may take up to 45 days to investigate the alleged error if, within ten days of receiving the notice of error, the financial institution provisionally credits the consumer’s account in the amount of the error (minus the amount of the consumer’s liability for an unauthorized transfer, if applicable and certain requirements are satisfied). There are certain exceptions to this rule, such as if the financial institution requested that the consumer provide written confirmation of the oral notice of error and the consumer does not do so. The financial institution also may wait up to 20 days to provisionally credit the account if the notice of error relates to an electronic fund transfer that occurred within 30 days of the first deposit to the account.

Because most claims by a consumer that a transaction was unauthorized take longer than ten days to review, the provisional crediting requirement can expose a financial institution to fraud. A consumer can withdraw a substantial amount from an ATM, claim that the transaction was unauthorized, and then abscond with the provisional credit before the financial institution can complete its investigation and verify that the transaction likely was authorized. This is a risk for all financial institutions in connection with any account subject to Regulation E. However, with traditional deposit accounts, financial institutions are able to protect themselves to some degree by vetting applicants for new accounts. Prepaid account issuers could do this in theory. But this would deny prepaid accounts to many people who use prepaid accounts precisely because they are not able to get traditional bank accounts.

For this reason, many industry commenters urged the Bureau not to require financial institutions to follow the provisional crediting rules in connection with prepaid accounts, or to at least allow them to follow a modified version of those rules. With one exception, the Bureau declined to do this. The Bureau determined that many consumers use prepaid accounts as their primary transaction accounts, and that the provisional crediting provisions are critical to ensure that they do not lose access to funds for too long in the event of an error.

The exception is for unverified prepaid accounts that are not payroll accounts or government benefits accounts. Specifically, a financial
institution may take up to 45 days to investigate a notice of error without provisionally crediting the account if:

- The financial institution has a consumer identification and verification process, but has not concluded that process and has disclosed to the consumer the risks of not registering the account (which is required in the pre-acquisition disclosures);
- The financial institution has a consumer identification and verification process and concluded that process, but could not verify the identity of the consumer, provided the financial institution has disclosed to the consumer the risks of not registering the account; or
- The financial institution does not have a consumer identification and verification process.

If the consumer’s account had not been verified at the time that the financial institution received the notice of error but was subsequently verified, the financial institution’s obligation to provisionally credit turns on whether the verification was completed before or after the deadline to provisionally credit that would have applied if the account had been verified at the time of the notice of error. If the account remains unverified at the time that the financial institution would have been required to credit provisionally with a verified account, then the financial institution has no obligation to credit provisionally. However, if the financial institution verifies the account before the provisional crediting deadline that would have applied to a verified account, then the financial institution must provisionally credit on that deadline. To illustrate:

- Account is opened and the first deposit is made on Day 1. A transaction occurs on Day 2. The consumer contacts the financial institution on Day 3 and claims that the transaction on Day 2 was not authorized. If this were a verified account, the financial institution would be required to credit the account provisionally on Day 22. (The financial institution may wait 20 days to credit provisionally, rather than the usual 10, because the disputed transaction occurred within 30 days of the first deposit.) The financial institution completes the customer identification and verification process on Day 20. Because the customer identification and verification process is complete before the deadline to credit provisionally that would have applied to a verified account (Day 22), the financial institution must provisionally credit on Day 22.

MODIFICATIONS TO REG E LITE

Financial institutions that offer payroll card accounts and government benefits accounts have always been permitted to follow a modified set of requirements under Regulation E. These modified requirements are commonly known as “Reg E Lite.” Basically, Reg E Lite gives the financial institution an alternative to providing periodic statements. Instead of providing periodic statements, the financial institution must make certain account information available online and over the telephone.

The Rule allows financial institutions to follow Reg E Lite in connection with all prepaid accounts. However, it makes a few adjustments to the Reg E Lite requirements. (What follows is not a full summary of Reg E Lite; it just
highlights the changes that the Rule makes to the Reg E Lite requirements.)

First, Reg E Lite presently requires a financial institution that elects not to send periodic statements to, among other things, make available to the consumer an electronic history of the consumer’s account transactions for the prior 60 days. The Rule extends the time that the account history must cover to the preceding 12 months.

Second, Reg E Lite presently requires the financial institution to provide the consumer with a written history of the consumer’s account transactions promptly in response to an oral or written request from the consumer. Presently, the written history must cover the 60 days preceding the date that the financial institution receives the consumer’s request. The Rule provides that the written history must cover at least the 24 months preceding the date that the financial institution receives the consumer’s request.

The Rule also creates an exception to the requirement to provide a written account history upon request. For accounts that are not payroll card accounts or government benefits accounts, the financial institution is not required to provide a written account history if the financial institution has not completed its consumer identification and verification process.

Finally, the Rule expands the information about fees that a financial institution must include in account histories. Presently, the account history provided by the financial institution need only include those fees assessed against the account during the statement period for electronic fund transfers, the right to make transfers, or account maintenance. The Rule requires the financial institution to disclose “the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise,” in the account histories. Additionally, all account histories must provide a summary total of all fees assessed by the financial institution against the prepaid account for the prior calendar month and for the calendar year to date.

PERIODIC STATEMENT REQUIREMENTS

A financial institution is not required to follow the Reg E Lite alternative in connection with prepaid accounts. A financial institution may opt to follow the full Regulation E requirements instead, which basically involves providing periodic statements to consumers. The Rule provides that a financial institution that elects to provide periodic statements in lieu of following the Reg E Lite requirements must include in each statement all fees assessed against the account. (Presently, the periodic statement needs to include only those fees that relate to electronic fund transfers or account maintenance.) Each periodic statement also must disclose a summary total of all fees assessed against the account in the prior calendar month and in the calendar year to date.

CHANGE-IN-TERMS NOTICES

The Rule requires the financial institution to include all the information required to be disclosed in the pre-acquisition long-form disclosure (described in more detail below) in the initial disclosures required by Regulation E. The Rule also provides, with two exceptions, that Regulation E’s change-in-terms notice requirements apply to any changes to information in the long-form disclosure included in the initial disclosures. The consequence of this is that the financial institution generally must provide 21 days’ advance notice of any change to a term or condition set forth in the long-form disclosure if that change would result in increased fees for the consumer.
The first of the two exceptions is for changes to third-party fees. As discussed below, certain third-party fees must be included in the long-form disclosure. However, a financial institution is not required to provide a change-in-terms notice solely to reflect a change in a third-party fee disclosed in the long-form disclosure.

The second exception relates to Regulation Z disclosures for overdraft credit features, which (as discussed below) must be incorporated into the long-form disclosure. Changes to these disclosures do not trigger the change-in-terms notice requirements under Regulation E.

ACCESS DEVICE DISCLOSURES

If the prepaid account has a physical access device, then the device must disclose the name of the financial institution, and the Web site URL and a telephone number that the consumer can use to contact the financial institution about the prepaid account. If the prepaid account does not have a physical access device, then this information must appear on the Web site, mobile application, or other entry point that a consumer must visit to access the prepaid account electronically.

New Requirements for Prepaid Accounts

The Rule adds a number of provisions to Regulation E that impose new requirements that apply only to prepaid accounts.

THE NEW DISCLOSURE REGIME

Overview

Consistent with the proposed rule, the Rule requires financial institutions to provide consumers with various disclosures prior to acquisition of a prepaid account. To facilitate “apples-to-apples” comparisons, the Rule imposes extensive requirements on the formatting and content of these disclosures in order to standardize them.

As with the proposed rule, the Rule requires financial institutions to provide two separate disclosures prior to acquisition of a prepaid account: (1) the “short-form disclosure” and (2) the “long-form disclosure.” There is also some information that the financial institution must provide at the same time as the short-form disclosure, but not in the short-form disclosure itself. We call this additional information the “Outside-the-Box Disclosures,” although the Rule does not use this term.

Timing of Disclosures

Generally

Subject to some exceptions discussed below, a financial institution must provide all the pre-acquisition disclosures before the consumer “acquires” the prepaid account.

The Rule adds an official interpretation to Regulation E, which explains that a consumer “acquires” a prepaid account “by purchasing, opening or choosing to be paid via a prepaid account.” The interpretation explains that, for a payroll card account, the consumer “acquires” the account when the consumer chooses to receive wages via the payroll card account.

Special Rules for Prepaid Accounts Acquired in Retail Locations

The Rule provides an exception to the requirement to provide the long-form disclosure pre-acquisition for prepaid accounts acquired at a retail location. In order to qualify for this exception, the following requirements must be met:

• The prepaid account access device must be contained in the packaging material;
• The short-form disclosure must be provided on or be visible through an outward-facing, external surface of the access device’s packaging material;

• The short-form disclosure must provide a telephone number and Web site URL that a consumer may use to access, respectively, oral and electronic versions of the long-form disclosure. This disclosure must be made using a clause that is substantially similar to the following: “Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site].” The URL may not exceed 22 characters and must be “meaningfully named”; and

• The long-form disclosure must be provided after the consumer acquires the prepaid account.

The financial institution also may provide an SMS code to access the long-form disclosure at the end of the statement that provides the telephone number and URL, provided that the SMS code can be accommodated on the same line of text as the required statement.

Special Rules for Prepaid Accounts Acquired Orally by Telephone

A financial institution is not required to provide the long-form disclosure prior to acquisition if the consumer acquires the prepaid account orally by telephone, provided that the following conditions are met:

• The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the information required to be disclosed in the long-form disclosure is available both by telephone and on a Web site;

• The financial institution actually makes the long-form disclosure available to the consumer both by telephone and on a Web site; and

• The long-form disclosure is provided after the consumer acquires the prepaid account.

Form of Disclosures

Written, Electronic and Oral Disclosures

The general rule is that pre-acquisition disclosures must be provided in writing.

The pre-acquisition disclosures must be provided in electronic form when a consumer acquires a prepaid account through electronic means. This includes both through a Web site and via a mobile applicable. The electronic disclosure “must be viewable across all screen sizes.” Electronic disclosures also “must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web borrowers or mobile applications, as applicable, and via screen readers.” Also, as noted above, if the financial institution does not provide the long-form disclosure to the consumer before acquisition of the prepaid account at a retail location, the long-form disclosure must be provided electronically through a Web site.

If a financial institution provides the pre-acquisition disclosures electronically in accordance with the foregoing rules, then the financial institution is not required to comply with the consumer consent provisions and other provisions of the Electronic Signatures in Global and National Commerce Act (“E-Sign”).
If the consumer acquires the prepaid account orally by telephone, then the short-form disclosure and the Outside-the-Box disclosures must be provided orally before acquisition. (As discussed above, the consumer also must be given instructions on how to access the long-form disclosure orally and on a Web site, but the financial institution is not required to provide the long-form disclosure pre-acquisition if the consumer does not choose to access it.)

Retainable Form

Pre-acquisition disclosures generally must be provided in a form that the consumer may keep. The exceptions to this rule are as follows:

- Disclosures that are provided orally, as permitted;
- Long-form disclosures provided via SMS to a customer who acquires a prepaid account at a retail location; and
- The disclosure of the purchase price (which is one of the Outside-the-Box disclosures, described below) if the purchase price is not disclosed on the packaging material.

Prominence and Size of Text

All text used to disclose information in the pre-acquisition disclosures must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast.

Requirements for the Short-Form Disclosures

The Rule dictates both the form and content of the short-form disclosure with particularity. We begin by discussing some general principles of the short-form disclosure, and then discuss the actual content.

General Rules for the Short-Form Disclosure

Tabular Format

Generally. Except when the short-form disclosure is provided orally, the following information must be disclosed in a table:

- Periodic fee;
- Per purchase fee;
- ATM withdrawal fees;
- Cash reload fee;
- ATM balance inquiry fee;
- Customer service fees;
- Inactivity fees;
- Statement regarding the number of additional fees charged; and
- Additional fees required to be disclosed based on revenue they generate.

Each of these categories of disclosures is described further below.

The table must be “substantially similar” to model forms provided in an appendix that the Rule adds to Regulation E. The appendix provides a model form for payroll card accounts, a model form for government benefits card accounts, two model forms for other prepaid accounts with single service plans, and one model form for prepaid accounts with multiple service plans.

The model short-form disclosures for payroll card accounts, government benefits accounts, and prepaid accounts with multiple service plans are provided later in this legal update. The model short-form disclosures for prepaid accounts with single service plans are immediately below. The first is for plans that provide FDIC insurance coverage. The second is for plans that do not.
Multiple Service Plans. The short-form disclosure requirements accommodate prepaid products that offer multiple service plans, each with a different fee schedule. In this situation, the financial institution has two options.

The first option is to provide a short-form disclosure that describes the fees and terms for the service plan into which the consumer will be initially enrolled by default upon acquiring the prepaid account.

The second option is to provide the short-form disclosure in the form of a table with separate columns for each service plan, in a form substantially similar to the following:

<table>
<thead>
<tr>
<th>Plan fee</th>
<th>Pay-as-you-go plan</th>
<th>Monthly plan</th>
<th>Annual plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per purchase</td>
<td>$0.25</td>
<td>$5.99 per mo.</td>
<td>$39.99 per yr.</td>
</tr>
<tr>
<td>ATM withdrawal</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>ATM withdrawal (out-net)</td>
<td>$2.50</td>
<td>$1.99</td>
<td>$1.99</td>
</tr>
<tr>
<td>Cash reload</td>
<td>$4.99*</td>
<td>$4.99*</td>
<td>$4.99*</td>
</tr>
<tr>
<td>ATM balance inquiry (in-net)</td>
<td>$0.50</td>
<td>$0.50</td>
<td>$0.50</td>
</tr>
<tr>
<td>ATM balance inquiry (out-net)</td>
<td>$1.00</td>
<td>$1.00</td>
<td>$1.00</td>
</tr>
<tr>
<td>Monthly service charge</td>
<td>$1.50</td>
<td>$0.50</td>
<td>$0.50</td>
</tr>
<tr>
<td>Inactivity fee after 12 months</td>
<td>$2.50</td>
<td>$2.50 per mo.</td>
<td>$2.50 per mo.</td>
</tr>
</tbody>
</table>

It is not clear what the financial institution should do if the service plan offerings do not fit neatly into these categories.

Prominence and Size

All text in the short-form disclosure “must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast.” The Rule also has detailed and extensive requirements for the type size of each item in the short-form disclosure (including exact
type size requirements for the footnote symbol that directs the consumer to the statement on variable fees). These type size requirements are both absolute (i.e., a minimum type size for each item) and relative (i.e., certain items must be larger than others). Certain items must also be bolded, and some items may not be bolded.

Note that the Rule dictates the type size for various items. Type size is not the same thing as font size. Word and other major word processing programs provide you with font sizes, not type sizes. Font size and type size do correlate, but the ratio between the two is different for different fonts. Be sure to confirm with your printer that the disclosures use the correct type sizes.

General Rules on Fee Disclosures

Variable Fees. Most of the information in the short-form disclosure is about fees charged in connection with the prepaid account. Generally, when disclosing a fee, the financial institution must disclose a single figure. The financial institution may not disclose a range of fees or say something like “Fee Varies.”

If the amount of a particular fee may vary, then the financial institution must disclose the highest amount that the financial institution may impose for the fee. After this amount, the financial institution must provide a symbol, such as an asterisk, that is linked to a statement that is substantially similar to the following: “This fee can be lower depending on how and where the card is used.” With one exception, the symbol that the financial institution uses must be the same for each variable fee.

The exception is for variable periodic fees. The financial institution may put a symbol after a variable periodic fee that is different from the symbol after the other variable fees (the rule gives the example of a dagger) linked to one additional line of text that explains the circumstances under which the fee waiver or reduction may occur.

Third-Party Fees. As a general rule, a financial institution may not include any third-party fees in the short-form disclosure. An official interpretation explains that third-party fees do not include fees imposed by a party for services performed on behalf of the financial institution. The interpretation gives the example of a program manager that performs customer service functions for the financial institution and charges a fee for live agent customer service. Such a fee would not be considered a third-party fee and would need to be disclosed in the short-form disclosure.

One exception to this general rule is for cash reload fees imposed by third parties. The financial institution must include third-party fees in the cash reload fee disclosure. The financial institution must include the highest third-party cash reload fee “known” by the financial institution at the time that the financial institution prints “or otherwise prepares” the short-form disclosure. The financial institution is not required to revise its short-form disclosure to reflect changes in third-party cash reload fees until the financial institution “manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short-form disclosure.”

To illustrate how the exception works, an official interpretation added by the Rule gives the example of a financial institution that discloses a $3.99 cash reload fee because that is the highest fee charged by a reload network in connection with the prepaid account product. Ten months after the short-form disclosure is prepared and packaging materials are printed, the network raises the fee to $4.25. The financial institution is not required to update the on-package disclosures until it next prints
packaging materials for that prepaid account program. With respect to oral and electronic versions of the short-form disclosure, the financial institution may wait until it otherwise updates its short-form disclosure to update the cash reload fee.

A financial institution will still need to coordinate with its reload partners to ensure that fee increases align with the institution’s print schedule. Changing the content of printed packaging materials is usually a fairly involved process. Changes need to be mocked up, reviewed, and provided to printers in advance of the actual printing date. There is going to be some lag time between the point that the financial institution learns about the new fee and the point that the financial institution can update its materials. What should it do about print runs scheduled in that interim period? Ordering the printer to stop those runs might be costly, and could create supply problems.

Unless the CFPB clarifies that packaging printed in this interim period would be considered compliant, a financial institution should coordinate with its cash reload partners to ensure that the partners provide the financial institution with sufficient warning of a fee increase to allow the financial institution to modify its packaging material for print runs that will occur after the scheduled increase.

**Short-Form Disclosure Content**

**Periodic Fee**

The short-form disclosure must disclose the periodic fee for “holding” the prepaid account. It must be described using a term substantially similar to “Monthly fee” or “Annual fee.”

**Domestic ATM Withdrawal Fees**

The financial institution must provide two fee amounts for cash withdrawals from ATMs located in the United States. The first amount is the fee for making a withdrawal from an ATM within the financial institution’s network or a network affiliated with the financial institution. The second amount is the fee for making a withdrawal from an ATM outside of that network. The financial institution must use a term substantially similar to “ATM withdrawal” to describe these fees, and terms substantially similar to “in-network” and “out-of-network” to describe the fees individually.

The ATM withdrawal fee disclosures should not include fees for withdrawals at ATMs outside of the United States.

**Cash Reload Fee**

The short-form disclosure must show the fee for reloading cash into the prepaid account. This disclosure must include fees for reloading cash by any means, including a reload pack. The cash reload fee must be described using the term “cash reload” or a substantially similar term.

As noted above, this is the one fee disclosure in the short-form disclosure that should include fees imposed by third parties. The amount disclosed should be the sum of the highest cash reload fee imposed by a third party plus the fee that the financial institution imposes.

**Domestic ATM Balance Inquiry Fees**

The financial institution must provide two amounts for balance inquiries at ATMs in the United States, for balance inquiries at in-network and out-of-network ATMs, respectively. These fees must be described using a term substantially similar to “ATM balance inquiry,” and the two fees should be labeled with terms substantially similar to “in-network” and “out-of-network,” respectively.

As with ATM withdrawal fees, the financial institution should not disclose fees for
transactions at foreign ATMs in this part of the short-form disclosure.

**Customer Service Fees**

The short-form disclosure must contain two fees for calling the financial institution about the prepaid account. The first is the fee for calling an interactive voice response system. The second is for calling a live customer service agent. The short-form disclosure must describe these fees using a term substantially similar to “Customer service.” The first fee must be labeled with a term substantially similar to “automated,” and the second fee must be labeled with a term substantially similar to “live agent.” Words substantially similar to “per call” should appear after each fee amount.

If the financial institution is providing a short-form disclosure for multiple service plans, then it need only disclose the fee for contacting a live customer service agent, using a term substantially similar to “Live customer service.”

**Inactivity Fee**

The short-form disclosure must disclose any fee for non-use, dormancy, or inactivity of the prepaid account. It must describe this fee with a term that is substantially similar to “Inactivity.” It must also disclose the conditions that trigger the fee.

An official interpretation added by the Rule gives the example of a financial institution that imposes an inactivity fee of $1 per month after 12 months of inactivity. The short-form disclosure would say “Inactivity (after 12 months with no transactions)” and “$1.00 per month.”

**Statement About the Number of Additional Fees**

The short-form disclosure must contain a statement that discloses the number of additional fee types the financial institution may charge consumers in connection with the prepaid account. This statement must be substantially similar to the following: “We charge [x] other types of fees.”

The number disclosed should be the total number of fee types that the financial institution may charge, excluding fees that are required to be separately disclosed in the short-form disclosure and finance charges imposed in connection with a “covered separate credit feature” accessible by a hybrid prepaid-credit card. (“Covered separate credit features” will be described in our next legal update, which will cover the Regulation Z amendments.)

**Revenue-Based Fees**

The financial institution must disclose the two additional fee types (excluding fees already disclosed and finance charges for covered separate credit features) that (1) individually generated 5 percent or more of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule; and (2) are the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule. For programs that have been in existence for 24 months, these determinations should be made using actual revenue data from the preceding 24-month period. For programs that have not been in existence for 24 months, the financial institution should use revenue projections.

Immediately above these additional fees, and immediately after (and on the same line as) the statement about the number of fees, should be a clause substantially similar to “Here are some of them.”

If only one fee meets the 5 percent threshold, then the financial institution should disclose only that
fee. If no fee meets the 5 percent threshold, then no additional fees need to be disclosed.

The financial institution must evaluate whether any changes need to be made to the additional fee disclosures every 24 months, and every time that the financial institution changes the fee schedule.

Statement Regarding Covered Credit Features

The short-form disclosure must disclose whether the financial institution will offer any “covered separate credit features” in connection with the prepaid account. If the financial institution might offer a covered separate credit feature to the consumer at any point, then the financial institution should disclose this fact with a clause that is substantially similar to the following: “You may be offered overdraft/credit after [x] days. Fees would apply.” If the financial institution will not be offering a covered separate credit feature, then the short-form disclosure should include a statement that is substantially similar to the following: “No overdraft/credit feature.” Our next legal update, on the Regulation Z amendment, will discuss covered separate credit features in more detail.

Statement Regarding FDIC or NCUA Insurance

The short-form disclosure must contain a statement that indicates whether the account is eligible for FDIC or NCUA insurance coverage. The statement must also explain to the consumer whether the consumer is required to register in order to obtain this coverage. The specific statement that the financial institution should use depends on the circumstances. The following table shows the statements that should be used under various scenarios:

<table>
<thead>
<tr>
<th>Funds Are Eligible for FDIC/NCUA Insurance</th>
<th>Funds Are Not Eligible for FDIC/NCUA Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Customer Identification/Verification Must Occur Before Acquisition</strong></td>
<td>Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible].</td>
</tr>
<tr>
<td><strong>Financial Institution Has a Customer Identification/Verification Process, But It Might Occur Post-Acquisition</strong></td>
<td>Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible,] and other protections.</td>
</tr>
<tr>
<td><strong>Financial Institution Does Not Have a Customer Identification/Verification Process</strong></td>
<td>N/A</td>
</tr>
</tbody>
</table>

Statement Regarding CFPB Web Site

The short-form disclosure must contain a statement that directs the consumer to the CFPB’s web site for general information about prepaid accounts. The statement must be substantially similar to the following: “For general information about prepaid accounts, visit cfpb.gov/prepaid.”
Reference to the Long-Form Disclosure

Finally, the short-form disclosure must contain a statement that directs the consumer to the long-form disclosure for complete information about the prepaid account. The content of this statement depends on whether the financial institution is relying on the exception, discussed above, that allows the financial institution to provide the long-form disclosure after acquisition for accounts acquired at a retail location.

If the financial institution is relying on this exception, then the statement must be substantially similar to the following: “Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site].” As discussed above, the Web site URL may not be longer than 22 characters and must be “meaningfully named.” The financial institution also may provide an SMS code at the end of this statement, if the SMS code can be accommodated on the same line of text.

If the financial institution is not relying on the retail acquisition exception, then the statement must be substantially similar to the following: “Find details and conditions for all fees and services in [location].”

Additional Short-Form Disclosure Requirements for Payroll Card Accounts and Government Benefits Card Accounts

Payroll Card Accounts

The short-form disclosure for a payroll card account must provide the consumer with a statement about other options to receive wages. This statement must appear at the top of the short-form disclosure. The CFPB gives the financial institution two options.

The first option is to provide a statement substantially similar to the following: “You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.” This was the statement in the proposed rule. Many industry commenters objected to it, primarily for two reasons. First, many industry commenters disliked the harsh tone of the statement, and were concerned that consumers might infer that the payroll card account is a bad option for receiving wages. Second, industry commenters pointed out that the statement could be misleading to consumers if the employer only pays wages electronically (as is permitted in some states). If a consumer who works for one of these employers does not have a bank account, then the consumer effectively is required to accept the payroll card. (Regulation E prohibits an employer from conditioning employment on the acceptance of wages via electronic fund transfer to a particular account. However, it does not prohibit an employer from conditioning employment on the employee agreeing to receive wages via electronic fund transfer, provided that the employer gives the employee the ability to choose into which account wages will be paid.)

In response to these industry concerns, the CFPB allowed financial institutions to provide an alternative disclosure regarding wage options. This alternative disclosure must be substantially similar to the following: “You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.”

It is not clear that the CFPB’s alternative will be much help to the industry. The challenge for a financial institution that offers payroll cards will be that the wage payment options could vary considerably by employer. Thus, the financial institution would need to create separate packages of disclosures for each employer for which the financial institution provides payroll cards. Further complicating the situation for the financial institution is the fact that the wage options offered by some employers might vary by
state (since each state has different rules about the wage payment options that employers must provide to employees).

For a payroll card account, the financial institution also may include a statement—in one additional line of text—directing the consumer to a location outside the short-form disclosure where the consumer may obtain information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. (Disclosure of this information for payroll cards is required by law in many states.) This statement must in the same type size as the statement “This fee can be lower depending on how and where the card is used.” If that statement does not appear in the short-form disclosure, then the statement about ways to access payroll card account funds and balance information must be in the same type size as the other disclosures at the bottom of the short form.

Here’s the model short form for payroll card accounts in the appendix:

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**Government Benefits Accounts**

The short-form disclosure for government benefits accounts must contain a statement that notifies the consumer about other ways to receive benefit payments. Agencies that provide benefit cards have two options. One option is to include a statement substantially similar to the following: “You do not have to accept this benefits card. Ask about other ways to receive your benefits.” The other option is to list the options available to the consumer using a statement substantially similar to the following: “You have several options to receive your payments: [list of options available to the consumer]; or this benefits card. Tell the benefits office which option you choose.”

The agency may also include a statement in the short-form disclosure that directs the consumer to a particular location outside the short-form disclosure for information on ways to access government benefits account funds and balance information.

Here’s the model short-form disclosure for government benefits accounts in the appendix:

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![Government Benefits Account Short Form](image-url)
### The Long-Form Disclosure

#### Form

The long-form disclosure information about fees must be in a table. Also, the information required to be in the long-form disclosure must be segregated from other information and must contain only information that is required or permitted to be in the long-form disclosure. The appendix provides the following model:

#### List of all fees for XYZ Prepaid Card

<table>
<thead>
<tr>
<th>All fees</th>
<th>Amount</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Get started</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Card purchase</td>
<td>$3.95</td>
<td></td>
</tr>
<tr>
<td><strong>Monthly usage</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monthly fee</td>
<td>$5.99</td>
<td>Monthly fee is waived in any month in which you receive a direct deposit or conduct at least 30 transactions.</td>
</tr>
<tr>
<td>Add money</td>
<td>$0.50</td>
<td></td>
</tr>
<tr>
<td>Direct deposit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash reload</td>
<td>$3.99</td>
<td>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.</td>
</tr>
<tr>
<td><strong>Spend money</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill payment (regular delivery)</td>
<td>$0.50</td>
<td>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.</td>
</tr>
<tr>
<td>Bill payment (expedited delivery)</td>
<td>$1.00</td>
<td>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.</td>
</tr>
<tr>
<td><strong>Get cash</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ATM withdrawal (in-network)</td>
<td>$0</td>
<td>“In-network” refers to the XYZ Bank ATM Network. Locations can be found at xyzbank.com/ATMs.</td>
</tr>
<tr>
<td>ATM withdrawal (out-of-network)</td>
<td>$1.99</td>
<td>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.</td>
</tr>
<tr>
<td><strong>Information</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer service (automated)</td>
<td>$0</td>
<td>No fee for calling our automated customer service line, including for balance inquiries.</td>
</tr>
<tr>
<td>Customer service (live agent)</td>
<td>$0.50</td>
<td>Per call. First 3 calls per month are free.</td>
</tr>
<tr>
<td>ATM balance inquiry (in-network)</td>
<td>$0</td>
<td>“In-network” refers to the XYZ Bank ATM Network. Locations can be found at xyzbank.com/ATMs.</td>
</tr>
<tr>
<td>ATM balance inquiry (out-of-network)</td>
<td>$0.50</td>
<td>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.</td>
</tr>
<tr>
<td><strong>Using your card outside the U.S.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International transaction</td>
<td>3%</td>
<td>Of the U.S. dollar amount of each transaction.</td>
</tr>
<tr>
<td>International ATM withdrawal</td>
<td>$3.00</td>
<td>This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.</td>
</tr>
<tr>
<td>International ATM balance inquiry</td>
<td>$2.00</td>
<td>This is our fee. You may also be charged a fee by the ATM operator.</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inactivity</td>
<td>$1.00</td>
<td>You will be charged $1.00 each month after you have not completed a transaction using your card for 12 months.</td>
</tr>
</tbody>
</table>

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/depositor/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.
Title

The long-form disclosure heading must state the name of the prepaid account program and that the long-form disclosure contains a list of all fees for that particular prepaid account program.

Fees

The long-form disclosure must disclose all fees that may be imposed in connection with a prepaid account. For each fee, the long-form disclosure must disclose: (1) the amount of the fee; and (2) the conditions, if any, under which the fee may be imposed, waived, or reduced. The financial institution may not use a symbol, such as an asterisk, to explain the conditions under which a fee may be imposed.

Unlike with the short-form disclosure, the long-form disclosure must disclose all third-party fee amounts that are known to the financial institution. For these third-party fees, the financial institution may (but is not required to) specify the date as of which the fee is accurate or that the third-party fee is subject to change. If a third-party fee may apply but the financial institution does not know the amount of the fee, then the financial institution must include a statement that the third-party fee may apply without specifying the amount of the fee.

A financial institution is allowed to disclose services and features that it provides for free in the long-form disclosure, although it is not required to do so.

Statement About FDIC or NCUA Insurance

The long-form disclosure must contain the exact disclosure regarding FDIC or NCUA insurance contained in the short-form disclosure, plus an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or consequences of the lack of such coverage, as applicable.

Statement About Covered Credit Features

The long-form disclosure must contain the statement about covered credit features in the short-form disclosure.

CFPB Contact Information

The long-form disclosure must contain a statement that is substantially similar to the following: “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.”

Regulation Z Disclosures

If a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered in connection with the prepaid account, then the long-form disclosure must include various disclosures required by Regulation Z, including the APR, the date the required information was printed, and a statement that the consumer should contact the financial institution for any change in the information since it was printed.

Outside-the-Box Disclosures

There is certain information that a financial institution must provide at the same time as the short-form disclosure, but outside of the short-form disclosure box. This information is:

- The name of the financial institution;
- The name of the prepaid account program;
- The purchase price for the prepaid account (if any); and
- The activation fee for the prepaid account (if any).

In a setting other than a retail location, this information must be disclosed in “close proximity” to the short form. An official interpretation explains that for prepaid accounts sold online, the
information will be considered in “close proximity” to the short-form disclosure if it is on the same web page as the short-form disclosure. If the short-form disclosure is provided orally, then the information is considered to be in close proximity if it is provided immediately before or after the short-form disclosure.

In a retail location, all the information other than the purchase price must be disclosed on the exterior of the access device’s packaging material. In a retail location, the purchase price may be disclosed either on the packaging material itself, or in close proximity to the packaging material.

Effective Date

The rule takes effect on October 1, 2017. This means that the CFPB has given the industry just shy of a year to come into compliance. However, the CFPB has decided not to require the industry to pull and trash inventory printed “in the normal course of business” before the effective date. Inventory printed in the normal course of business before October 1, 2017 may continue to be sold after the effective date. However, a financial institution that makes certain changes to terms as a result of the Rule will be required to provide change-in-terms notices to consumers who acquire packaging printed before the effective date of the Rule.

The Bureau doesn’t say in the rule, official interpretations or supplementary information what it means by “in the normal course of business.” It is possible that the Bureau included this qualifier to prevent issuers or program managers from mass producing non-compliant inventory on the eve of the Rule’s effective date. Issuers and program managers should monitor their production schedule in the months leading up to the rule carefully to ensure that they cannot be accused of doing this.

We hope that this guide is helpful to you. Like any good literary work, a sequel is in the works. Maybe even a movie. Please be on the lookout for the next installment, which will cover the Regulation Z amendments.

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Endnotes

1 Actually, this legal update is not intended to be a comprehensive compliance guide. Although we discuss the Rule in fair detail, there are a number of nuances and technical points that we gloss over or omit altogether.

2 The rule that amended Regulation E to apply to payroll card accounts was finalized in 2006, but it did not take effect until 2007.

3 An educational resources page on the CFPB’s web site, unrelated to prepaid accounts or the Rule, might shed some light on how the agency would answer that question. The page presents the following question: “What is the difference between a checking account, a demand deposit account, and a NOW (negotiable order of withdrawal) account?” It says that a “demand deposit account is just a
different term for a checking account.” It also says that not “all accounts that give you checks are ‘checking accounts.'” If the CFPB takes this position with respect to the Rule, then the fact that a prepaid account has a check-writing feature would not automatically mean that the account qualifies as a “checking account.” However, the examples the CFPB gives of accounts with checking-writing features that don’t qualify as “checking accounts” don’t completely foreclose the possibility that a prepaid account could qualify as a checking account. The CFPB says that a money market account that allows the accountholder to write checks would not generally be considered a checking account because “they are not generally suited for day-to-day business, given the restrictions on their use.” This rationale would not apply to many prepaid accounts, which are designed for day-to-day business. The CFPB also says that a credit account with a check-writing feature would not generally be considered a “checking account.”

Thanks to Marilyn Bochicchio at Hidden Brain for pointing this out.

4 The risk of that occurring, however, is probably low, as there does not appear to be much overlap between the definitions of payroll card account and government benefits account, respectively, and the exclusions.

5 These exclusions actually are redundant, as “store gift cards” and “gift certificates” are defined to include only products that are redeemable at a single merchant or group of affiliated merchants, and thus could not meet the definition of “prepaid account” anyway.


7 12 C.F.R. § 1005.10(e).

8 The advance notice requirement also applies to a change to terms or conditions in the initial disclosures that would result in: (1) increased liability for the consumer; (2) fewer types of available electronic fund transfers; or (3) stricter limitations on the frequency or dollar amount of transfers. However, changes to the long-form disclosure information would not appear to fall into any of these categories.

9 Actually, it is not completely clear whether the financial institution must provide the disclosure that the amount of the fee may vary, or simply is allowed to do so. This probably is a moot point, since most financial institutions will want to alert the consumer to the fact that the fee might be lower than the amount disclosed.

10 In order for a customer to receive the benefits of pass-through deposit insurance coverage protection, the financial institution, the program manager or another party must have a record of the customer’s identity.
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