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Executive Summary of the 2018 Prepaid Amendments

On January 25, 2018, the Consumer Financial Protection Bureau (Bureau) issued a final rule (2018 Prepaid Amendments) amending and clarifying certain provisions of Regulation E and Regulation Z related to prepaid accounts. This executive summary provides an overview of the 2018 Prepaid Amendments. However, it is not a substitute for reviewing the final rule. The final rule is the definitive source regarding its requirements.

The 2016 Prepaid Rule,¹ as amended by the 2018 Prepaid Amendments, is referred to in this executive summary as the Prepaid Rule.

Effective Date

The 2018 Prepaid Amendments extend the effective date of the 2016 Prepaid Rule to April 1, 2019. All provisions of the Prepaid Rule will become effective on April 1, 2019.

¹ The Bureau issued the 2016 Prepaid Rule, which amends Regulation E and Regulation Z to add consumer protections related to prepaid accounts, on October 5, 2016. On April 20, 2017, the Bureau issued a final rule extending the 2016 Prepaid Rule's general effective date to April 1, 2018. The 2018 Prepaid Amendments amend and clarify the 2016 Prepaid Rule, and further extend its effective date to April 1, 2019.

Error Resolution and Limited Liability

The 2018 Prepaid Amendments create an exception from Regulation E's error resolution and limited liability requirements for unverified prepaid accounts (other than payroll card accounts or government benefit accounts). The exception applies to such prepaid accounts:

1. That have not concluded the consumer identification and verification process, provided that the financial institution has disclosed the risks of not registering and verifying the account using a notice that is substantially similar to the model notice in revised Appendix A-7(c);
2. For which the consumer identification and verification process has concluded but for which the consumer's identity could not be verified, provided that the financial institution has disclosed the risks of not registering and verifying the account using a notice that is substantially similar to the model notice in revised Appendix A-7(c); or
3. That are in programs for which there is no consumer identification and verification process, provided that the financial institution has made the alternative disclosure described in 12 CFR 1005.18(d)(1)(ii) and discussed below.

For prepaid accounts in programs that have a consumer identification and verification process, the exception only applies to the extent a prepaid account remains unverified. A financial institution must limit liability and resolve errors that occur after a consumer's identity is verified, in accordance with the Prepaid Rule and Regulation E. For accounts where the consumer's identity is later verified, a financial institution is not required to limit liability and resolve errors with regard to disputed transactions that occurred prior to successful completion of the consumer identification and verification process for that account.

The 2018 Prepaid Amendments revise the model notice in Appendix A-7(c) to address unverified prepaid accounts. The revisions to the model notice clarify that limited liability and error resolution rights apply only upon successful verification of the consumer's identity.

The 2018 Prepaid Amendments also require a specific disclosure for prepaid accounts that are part of a program that does not have an identification and verification process. The initial disclosures for prepaid accounts in such programs must provide a description of the error resolution process (if any) and the limitations on a consumer's liability for unauthorized transfers (if any) that apply to the prepaid account. If the financial institution does not offer limited liability or error resolution protections on prepaid accounts in such a program, the initial disclosures must state that there are no such protections.

Exclusion for Loyalty, Award, or Promotional Gift Cards

The Prepaid Rule's definition of "prepaid account" contains several exclusions, including an exclusion for loyalty, award, or promotional gift cards as defined in the Gift Card Rule.² The 2018 Prepaid Amendments address the scope of this exclusion. If a card that satisfies the Gift Card Rule's definition of loyalty, award, or promotional gift card under 12 CFR 1005.20(a)(4)(i) and (ii) does not include disclosures pursuant to 12 CFR 1005.20(a)(4)(iii), the card is nevertheless excluded from the definition of prepaid account if it is not marketed to the general public pursuant to 12 CFR 1005.20(b)(4). A loyalty, award, or promotional gift card that includes disclosures pursuant to 12 CFR 1005.20(a)(4)(iii) continues to be excluded from the definition of prepaid account regardless of whether it is marketed to the general public.

Unsolicited Issuance and Timing for Delivery of Pre-Acquisition Disclosures for Certain Prepaid Accounts

The 2018 Prepaid Amendments clarify the timing requirements for delivery of pre-acquisition disclosures where a financial institution or third party disbursing funds to a consumer via a prepaid account (other than a payroll card account or government benefit account) does not offer any alternative means for the consumer to receive those funds. In such cases, the pre-acquisition disclosures may be provided at the time the consumer receives the prepaid account.

If an access device for a prepaid account (other than a payroll card account or government benefit account) is provided on an unsolicited basis for disbursing funds to a consumer, and the financial institution or third party disbursing the funds via the prepaid account does not offer any alternative means for the consumer to receive those funds, the financial institution must inform the consumer that there are no other means by which the consumer can initially receive the funds and the consequences of disposing of the access device.

² The Gift Card Rule defines a loyalty, award, or promotional gift card as a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and sets forth certain disclosures detailed in the Gift Card Rule. Relevant definitions in the Gift Card Rule can be found at 12 CFR 1005.20(a)(4), (b)(3), and in related commentary.

These provisions do not apply to payroll card accounts and government benefit accounts because they remain subject to Regulation E's existing compulsory use prohibition.

Written Pre-Acquisition Disclosures When Consumer Acquires Prepaid Account Electronically or by Telephone

The 2018 Prepaid Amendments create an exception to the requirement that pre-acquisition disclosures be provided in electronic form if the consumer acquires a prepaid account through electronic means or orally if the consumer acquires the prepaid account by telephone. Pursuant to this exception, a financial institution is not required to provide the pre-acquisition disclosures in electronic form to a consumer who obtains a prepaid account electronically if the financial institution provides written pre-acquisition disclosures to the consumer prior to acquisition of the prepaid account. Similarly, a financial institution is not required to provide the pre-acquisition disclosures orally to a consumer who acquires a prepaid account by telephone if the financial institution provides written pre-acquisition disclosures to the consumer prior to acquisition of the prepaid account.

The Retail Location Exception and Delivery of Long Form Disclosure

The 2018 Prepaid Amendments provide additional flexibility regarding the delivery of the long form disclosure under the retail location exception. Providing the long form disclosure electronically without regard to the E-Sign Act's consumer notice and consent requirements satisfies the retail location exception's condition to provide the long form disclosure after acquisition if:

1. The financial institution does not provide the long form disclosure inside the prepaid account packaging material, and
2. The financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

Pursuant to this amendment, a financial institution that has not obtained the consumer's contact information for a prepaid account is not required to provide the long form disclosure after the consumer acquires the prepaid account.³ A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

Disclosure of Additional Fee Types with More than Two Variations

The 2018 Prepaid Amendments provide an alternative for disclosing additional fee types with more than two fee variations. Other than for multiple service plans, a financial institution may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required for ATM balance inquiry fees and customer service fees.⁴ However, the Bureau expects that if three or more fee variations cannot be consolidated into two categories in a logical manner, or if doing so would cause consumer confusion, a financial institution will not avail itself of the new alternative. Instead, the Bureau expects that the financial institution will disclose the name of the additional fee type and the highest fee amount (accompanied by a symbol, such as an asterisk, indicating the fee may be lower depending on how and where the card is used) as otherwise required under the Prepaid Rule.

Foreign Language Disclosures

Generally, the Prepaid Rule requires financial institutions to provide pre-acquisition disclosures in a foreign language if, among other things, the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. The 2018 Prepaid Amendments create an exception to this requirement for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party, or by the employer or

³ The separate condition requiring the financial institution to make the long form disclosures accessible by telephone and via a website continues to apply under the retail location exception.

⁴ See comment 1005.18(b)(2)(ix)(C)-1.ii for an example of this alternative disclosure.

government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account recipients.

Submission of Prepaid Account Agreements to the Bureau

The 2018 Prepaid Amendments make two changes to the rules governing submission of prepaid account agreements to the Bureau.⁵ Specifically, the 2018 Prepaid Amendments permit issuers to:

1. Submit the short form disclosure and the information required to be disclosed in the long form disclosure to the Bureau as separate addenda (rather than as part of an integrated agreement or as a single addendum); and
2. Delay submitting an updated list of names of other relevant parties to a prepaid account agreement (such as employers for a payroll card program or agencies for a government benefit program) until the earlier of: (a) the time the issuer submits an amended agreement or changes to other identifying information; or (b) May 1 of each year, for any updates to the list of names of other relevant parties that occurred between the issuer's last submission of relevant party information for that agreement and April 1 of that year.

Credit-Related Provisions

The Prepaid Rule establishes requirements in connection with hybrid prepaid-credit cards that can access overdraft credit features offered by a prepaid account issuer, its affiliate, or its business partner. The 2018 Prepaid Amendments create a limited exception from the definition of business partner in 12 CFR 1026.61(a)(5)(iii) to exclude certain arrangements between companies that offer credit card accounts that are subject to traditional credit card rules under Regulation Z and companies that offer prepaid accounts, including digital wallet providers. Provided that certain safeguards set forth in the 2018 Prepaid Amendments are in place, prepaid cards offered under such arrangements are not hybrid prepaid-credit cards and the credit card accounts are not covered separate credit features under the Prepaid Rule.

⁵ The Bureau is also deleting language in 12 CFR 1005.19 that is no longer needed because the requirement to make submissions to the Bureau will be effective on the same day as the other provisions of the Prepaid Rule.

The 2018 Prepaid Amendments also expand the exception in 12 CFR 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. A prepaid account issuer may take advantage of this expanded exception with respect to a negative balance even if a covered separate credit feature offered by a business partner is attached to the prepaid account so long as the other conditions contained in the exception are satisfied. The 2018 Prepaid Amendments also make changes to other provisions in Regulation Z to be consistent with this expanded exception.