

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB-2017-0008]

RIN 3170-AA69

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to delay the October 1, 2017 effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) by six months, to April 1, 2018.

DATES: Comments must be received on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2017-0008 or RIN 3170-AA69, by any of the following methods:

- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2017-0008 or RIN 3170-AA69 in the subject line of the email.
- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street, NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin or Yaritza Velez, Counsels, or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA)

(Prepaid Accounts Final Rule).¹ The Prepaid Accounts Final Rule has an effective date of October 1, 2017. Through its efforts to support industry implementation of the Prepaid Accounts Final Rule, the Bureau has learned that some industry participants believe they will have difficulty complying with certain provisions of the Prepaid Accounts Final Rule that go into effect October 1, 2017. In order to facilitate compliance with the Prepaid Accounts Final Rule, and to allow an opportunity for the Bureau to assess whether any additional adjustments to the Rule are appropriate, the Bureau is proposing to extend the effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. The Bureau believes that such an extension would, among other things, help industry participants address certain packaging-related logistical issues for prepaid accounts that are sold at retail locations.

This proposed rule seeks comment on whether the Bureau should extend the effective date of the Prepaid Accounts Final Rule, and if so, whether six months is an appropriate length of time for such an extension. The Bureau is also proposing to make conforming amendments to certain regulatory text and commentary adopted in the Prepaid Accounts Final Rule to reflect the proposed effective date delay.

II. Background

A. The Prepaid Accounts Rulemaking

In the Prepaid Accounts Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded Regulation Z's coverage to overdraft credit features that may be offered in conjunction with

¹ 81 FR 83934 (Nov. 22, 2016).

prepaid accounts.² The Bureau released a proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014,³ and released the Prepaid Accounts Final Rule on October 5, 2016.

Upon issuing the Prepaid Accounts Final Rule, the Bureau initiated robust efforts to support industry implementation.⁴ Information regarding the Bureau's Prepaid Accounts Final Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation website at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>.

B. Proposed Effective Date

As published, the Prepaid Accounts Final Rule has a general effective date of October 1, 2017. As part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. As a result of those discussions, the Bureau has learned that some industry participants are concerned that they will have difficulty in complying with the Prepaid Accounts Final Rule while also ensuring continued availability of their prepaid products and with minimal disruption to consumers by October 1,

² 81 FR 83934 (Nov. 22, 2016).

³ 79 FR 77102 (Dec. 23, 2014) (Prepaid Accounts NPRM). *See also* Press Release, CFPB, *CFPB Proposes Strong Federal Protections for Prepaid Products* (Nov. 13, 2014), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-strong-federal-protections-for-prepaid-products/>. The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

⁴ These on-going efforts include: (1) the publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Final Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Final Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, and a summary of the rule's effective date provisions; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Final Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums.

2017 for a variety of reasons. For example, the Bureau put in place an exception in Regulation E § 1005.18(h)(2) pursuant to which financial institutions are not required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. Nonetheless, the Bureau understands that because of concerns about legal and regulatory exposure at both the Federal and State level due to potential product changes, and in particular due to developments following release of the Prepaid Accounts Final Rule, some industry participants believe that they should in fact pull and replace non-compliant packaging. Industry has also raised related concerns regarding the production capacity of packaging manufacturers and other supply chain limitations leading up to the October 1, 2017 effective date due to increased demand by industry on a limited number of manufacturers.

In addition, in the course of working to implement the Prepaid Accounts Final Rule, some industry participants have raised concerns about what they describe as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices (including recent changes thereto) that they did not fully address in their comment letters on the Prepaid Accounts NPRM, which may lead to additional complexities for implementation and negative implications for consumers.

The Bureau continues to believe that the Prepaid Accounts Final Rule will provide significant benefits to consumers and that, therefore, expeditious implementation remains essential to provide comprehensive consumer protections to users of prepaid accounts. The Bureau also appreciates the concerns raised by some industry participants that they may have difficulty in complying with the rule by October 1, 2017. Accordingly, for the reasons stated herein, the Bureau is proposing to delay the effective date of the Prepaid Accounts Final Rule for

a period of six months, to April 1, 2018. In order to effect this change, the Bureau is also proposing to amend Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary, to reflect the delayed effective date.

Furthermore, delaying the effective date will allow the Bureau to more closely evaluate concerns raised by industry participants regarding certain substantive aspects of the Prepaid Accounts Final Rule that they assert are posing particular complexities for implementation or may have negative consequences for consumers that were not anticipated or fully explained by commenters in response to the Prepaid Accounts NPRM, and to propose revisions to those provisions of the Prepaid Accounts Final Rule if it determines that amendments are necessary and appropriate.

The Bureau believes that, based on its initial outreach to industry, a six-month delay would be sufficient for industry participants to ensure that they can comply with the Prepaid Accounts Final Rule with minimal disruption to consumers. In particular, a six-month extension would both allow more time for package printing and allow pull-and-replace processes at retail locations to occur after the winter holiday season, which is a particularly busy time for retailers. Indeed, the Bureau understands that industry often effectuates pull-and-replace processes in the spring for precisely this reason. The Bureau also believes that a six-month delay will allow the Bureau adequate opportunity to consider possible additional amendments to the Prepaid Accounts Final Rule, and for industry to implement any such changes, without unnecessary disruption to consumers' access to, and use of, prepaid accounts.

The Bureau solicits comment on whether it should delay the effective date for the Prepaid Accounts Final Rule, and if so, whether six months is an appropriate length of time. The Bureau also solicits comment on the potential consequences of not extending the effective date. In

particular, the Bureau asks commenters to provide specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on industry, consumers, and other stakeholders. Finally, the Bureau solicits comment about the impact of the proposed delay on consumers who use prepaid accounts.

The Bureau is not proposing to delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018. The Bureau expects to have its agreement submission process in place by October 1, 2018, and the Bureau's outreach has not indicated that industry participants are concerned that they will not be able to meet the agreement submission effective date. The Bureau nonetheless solicits comment on whether it should delay the effective date of the agreement submission requirement, and if so, for what length of time.

The Bureau is not proposing to amend any substantive requirements of the Prepaid Accounts Final Rule at this time. The purpose of this notice is not to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. The Bureau will continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Final Rule. If the Bureau determines that amendments to the substantive provisions of the Prepaid Accounts Final Rule are warranted, it will do so through a separate rulemaking.

III. Legal Authority

The Bureau is proposing to exercise its rulemaking authority pursuant to EFTA section 904(a) and (c), Dodd-Frank Act sections 1022(b)(1) and 1032(a), and TILA section 105(a) to delay the effective date of the Prepaid Accounts Final Rule.

The legal authority for the Prepaid Accounts Final Rule is described in detail in the Prepaid Accounts Final Rule’s **SUPPLEMENTARY INFORMATION**.⁵ As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)⁶ authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provides that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for any class of electronic fund transfers or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. As amended by the Dodd-Frank Act, TILA section 105(a)⁷ directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.⁸ Section 1032(a) of the Dodd-Frank Act⁹ provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and

⁵ See, e.g., 81 FR 83934, 83958-60 (Nov. 22, 2016).

⁶ 15 U.S.C. 1593b(a).

⁷ 15 U.S.C. 1604(a).

⁸ TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required by parts A, D, or E of TILA shall have an effective date “of that October 1 which follows by at least six months the date of promulgation.” Section 105(d) further provides that the Bureau “may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements.” Although the Bureau desires to have the rule take effect as soon as feasible given its value for consumers, the Bureau is proposing to use its discretion under TILA section 105(d) to lengthen the period in this instance. The Bureau believes the changes the Prepaid Accounts Final Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

⁹ 12 U.S.C. 5532(a).

over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Additionally, under Dodd-Frank Act section 1022(b)(1),¹⁰ the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. EFTA, TILA, and Title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)¹¹ to prescribe rules under EFTA, TILA, and Title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act¹² prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

IV. Provisions Affected by the Proposal

1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(b) Pre-Acquisition Disclosure Requirements

18(b)(2) Short Form Disclosure Content

18(b)(2)(ix) Disclosure of Additional Fee Types

Regulation E § 1005.18(b)(2) describes the short form disclosure requirements for prepaid accounts. Section 1005.18(b)(2)(ix) contains requirements specifically regarding additional fee types. Section 1005.18(b)(2)(ix)(D) describes the timing requirements for the

¹⁰ 12 U.S.C. 5512(b)(1).

¹¹ 12 U.S.C. 5512(b).

¹² 12 U.S.C. 5512(b)(2).

initial assessment of an additional fee types disclosure, and § 1005.18(b)(2)(ix)(E) describes the timing for the periodic reassessment and update of additional fee types disclosures. The Bureau is proposing to revise the dates in the regulatory text and headings in § 1005.18(b)(2)(ix)(D)(1) through (3) and in comments 18(b)(2)(ix)(D)(1)-1, 18(b)(2)(ix)(D)(2)-1, 18(b)(2)(ix)(E)(2)-1.i through iii, and 18(b)(2)(ix)(E)(3)-1 to reflect the proposed revised effective date of April 1, 2018. The Bureau is not, however, proposing to change the October 1, 2014 date in § 1005.18(b)(2)(ix)(D)(1) and related commentary, which is the beginning of the time frame for which financial institutions may calculate additional fee types to disclose, so as not to inconvenience financial institutions who have already prepared their additional fee types calculations in reliance on that date.

18(h) Effective Date and Special Transition Rules for Disclosure Provisions

Regulation E § 1005.18(h) sets forth several provisions to make clearer the Prepaid Accounts Final Rule's general October 1, 2017 effective date. The Bureau is proposing to revise the dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)-1, 2, 6.i and 6.ii to reflect the proposed revised effective date of April 1, 2018.

1005.19 Internet Posting of Prepaid Account Agreements

19(f) Effective Date

19(f)(1) Effective Date

Regulation E § 1005.19(f)(1) sets forth the general effective date for the prepaid account agreement posting requirements in § 1005.19, other than the delayed requirement to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b), as addressed in § 1005.19(f)(2). The Bureau is proposing to revise the date in the regulatory text of § 1005.19(f)(1) to reflect the proposed revised effective date of April 1, 2018. As discussed

above, the Bureau is not proposing to delay the October 1, 2018 date for submission of agreements to the Bureau.

V. Effective Date

The Bureau is proposing to delay the effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. Additionally, the Bureau is proposing to make conforming amendments to Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary. After considering comments received on the proposal, the Bureau will publish a final rule with respect to the effective date of the Prepaid Accounts Final Rule. The Bureau proposes that the final rule with respect to the effective date of the Prepaid Accounts Final Rule will become effective 30 days after publication in the *Federal Register*, as required under section 553(d) of the Administrative Procedure Act.¹³

VI. Section 1022(b) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The

¹³ 5 U.S.C. 553(d).

Bureau consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the costs, benefits, and impacts of the Prepaid Accounts Final Rule's major provisions.¹⁴ Compared to the baseline established by the Prepaid Accounts Final Rule,¹⁵ the proposed delay of the effective date of the Prepaid Accounts Final Rule would generally benefit covered persons by facilitating initial compliance with the Prepaid Accounts Final Rule's requirements and delaying the start of ongoing compliance costs. Because covered persons retain the option of complying with the Prepaid Accounts Final Rule's effective date, any delay in the effective date will not increase costs to providers because they retain the option of complying with the original effective date. If a delay in the effective date would help to preserve consumer access to covered products by minimizing industry disruption, both consumers and covered persons would benefit. The Bureau believes that delaying the effective date may also delay consumers' realization of benefits arising from the protections provided by the Prepaid Accounts Final Rule. In addition, the Bureau does not expect the proposed rule to have a differential impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act or on consumers in rural areas. The Bureau does not believe that the proposed delay in the effective date would reduce consumer access to consumer financial products and services, and it may increase

¹⁴ 81 FR 83934, 84269 (Nov. 22, 2016).

¹⁵ The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

consumer access by decreasing the possibility of industry disruption arising from the Prepaid Accounts Final Rule’s implementation.

The Bureau requests comment on this discussion as well as submission of additional information that could inform the Bureau’s consideration of the potential benefits, costs, and impacts of this proposed rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁶ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996¹⁷ (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.¹⁸ The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.¹⁹

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.²⁰ The Bureau also is

¹⁶ Public Law 96-354, 94 Stat. 1164 (1980).

¹⁷ Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

¹⁸ 5 U.S.C. 601 through 612. The term “‘small organization’ means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].” 5 U.S.C. 601(4). The term “‘small governmental jurisdiction’ means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].” 5 U.S.C. 601(5).

¹⁹ 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

²⁰ 5 U.S.C. 601 through 612.

subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.²¹

In the Prepaid Accounts NPRM, the Bureau concluded that the rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.²² That conclusion remained unchanged for the Prepaid Accounts Final Rule.²³ The Bureau concludes that an IRFA is not required for this proposed rule because the proposed rule, which would delay the effective date of a rule that will not have a significant economic impact on a substantial number of small entities, would not have a significant economic impact on a substantial number of small entities if adopted.

As discussed above, the proposal would delay the effective date of the Prepaid Accounts Final Rule to April 1, 2018. The proposed six-month delay in the effective date would benefit small entities by providing additional flexibility with respect to the timing of the Prepaid Accounts Final Rule's implementation. In addition to generally providing increased flexibility, the delay in the effective date would permit small entities to delay the commencement of any ongoing costs that result from complying with the Prepaid Accounts Final Rule. Because small entities retain the option of complying with the Prepaid Accounts Final Rule's original effective date, the proposed rule's delay of the effective date will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Final Rule. Accordingly, the

²¹ 5 U.S.C. 609.

²² 79 FR 77102, 77283 (Dec. 23, 2014).

²³ 81 FR 83934, 84308 (Nov. 22, 2016).

undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995²⁴ (PRA), Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Final Rule have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170-0014 (Regulation E) and 3170-0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

²⁴ 44 U.S.C. 3501 *et seq.*

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED
“PREPAID ACCOUNTS UNDER THE ELECTRONIC FUND TRANSFER ACT
(REGULATION E) AND THE TRUTH IN LENDING ACT (REGULATION Z);
DELAY OF EFFECTIVE DATE”]

Dated: March 8, 2017.

Richard Cordray
Richard Cordray,

Director, Bureau of Consumer Financial Protection.