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CFPB Delays Effective Date of Prepaid Accounts Rule – How Can You Prepare?

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The CFPB has provided additional time to prepare for its long-anticipated prepaid accounts rule, moving the rule's effective date from October 1, 2017 to April 1, 2018. Per the CFPB, the delay will allow industry participants more time to coordinate operational processes both internally and externally to ensure compliance with the rule.

At just under 1,700 pages, the Rule is one of the CFPB's largest and most anticipated in recent memory, as it provides consumer protections for prepaid accounts under Regulation E (Electronic Fund Transfer Act) and Regulation Z (Truth in Lending Act). The highlights of the Rule include:

Inclusion of "Prepaid Account" Under Regulation E

The Rule adds the term "prepaid account" to the definition of "account" under Regulation E. The definition of "prepaid account" includes items such as payroll card accounts, accounts marketed or labeled as "prepaid" and which are redeemable at multiple, unaffiliated merchants or can be used at ATMs and government benefit accounts. The Rule does not apply to gift certificates, store gift cards, general use-prepaid cards which are marketed and/or labeled as gift certificates, or accounts loaded with funds from health savings accounts or flexible spending accounts.

Requirement for Prepaid Disclosures

Prior to opening a prepaid account, consumers must be provided with two sets of "Know Before You Owe" written disclosures ("short-form" and "long-form") identifying fees and other charges similar to those used in mortgages. Under the "short-form" disclosures, account issuers must set forth "static fees" which include:

- period fees
- per purchase fees
- ATM withdrawal fees
- cash reload fees
- ATM balance inquiry fees
- customer service fees; and
- inactivity fees

The "short-form" disclosures must also disclose the two additional fee types which generated the highest revenue from consumers during the previous 24 months. Finally, the disclosures must include information regarding overdraft features, FDIC insurance and a link to the CFPB's website for general information.

The "long-form" disclosures must include the same information as the "short-form" disclosures, but must also include information about "all fees that may be imposed in connection with the prepaid account ... and the conditions under which they may be imposed." Under certain scenarios, such as where a prepaid account is acquired in a retail store, the "long-form" disclosures can be provided after the consumer acquires the account.

One critical note for these disclosures concerns packaging. The Rule does not require account issuers to pull and replace existing products and packaging which were manufactured prior to April 1, 2018 that does not

meet the disclosure requirements. The CFPB has included several model forms for both types of disclosures as part of the Rule.

Account Information to be Provided to Consumer

The Rule requires financial institutions to furnish account information regarding prepaid accounts to consumers similar to a checking account. Following an oral or written request from a consumer, a financial institution must provide a written history covering the preceding 24 months from the date the request is received. This is a change from the current rule which only requires a written history covering the preceding 60 days. The Rule does provide for exceptions to this requirement if the consumer has not completed identification and verification procedures for the account under Regulation E.

Additionally, financial institutions must either: (a) provide period statements to the consumer; or (b) provide access to an online account history showing transactions for the prior 12 months.

Prepaid Account Agreements Must be Submitted to the CFPB

The Rule requires account issuers to submit prepaid account agreements to the CFPB by October 1, 2018 for inclusion in a database. The agreement must also be posted on the issuer's website and be available to the general public.

Error Resolution Requirements

The Rule extends dispute resolution procedures under Regulation E to prepaid accounts. Therefore, account issuers will be required to investigate and resolve complaints of alleged fraud or unauthorized charges by consumers. However, if a consumer has not completed a consumer identification and verification process for the account, the issuer is not required to issue a provisional credit to the account during the investigation.

The preparations needed in advance of the effective date of the Rule are extensive. Financial institutions and industry participants would be wise to engage in a full scale analysis of the Rule to identify which of its products fall subject to the Rule and develop a cross-functional plan to ensure compliance prior to the effective date. This will likely require collaboration among many different departments including compliance, operations, marketing, production, distribution, sale and IT. The Rule covers a large scope of products and testing for compliance is paramount prior to the effective date.