

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

Bulletin 2022-02: Compliance Bulletin on the Electronic Fund Transfer Act's Compulsory Use Prohibition and Government Benefit Accounts

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin.

SUMMARY: The Electronic Fund Transfer Act (EFTA) provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of receipt of a government benefit. The Bureau of Consumer Financial Protection (Bureau) is issuing this Compliance Bulletin to reiterate that this prohibition in EFTA applies to government benefit accounts.

DATES: This bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

I. Discussion

Section 913 of EFTA provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers (EFTs) with a particular

financial institution as a condition of employment or receipt of a government benefit.¹ This provision, often referred to as the compulsory use prohibition, is implemented in § 1005.10(e)(2) of Regulation E. The Bureau is issuing this Compliance Bulletin to reiterate that the compulsory use prohibition in EFTA applies to government benefit accounts.

A. Background

Congress enacted EFTA in 1978 with the purpose of “provid[ing] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.”² EFTA’s primary objective is “the provision of individual consumer rights.”³ Congress also empowered the Board of Governors of the Federal Reserve System (Board) to promulgate regulations implementing EFTA. With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), authority to implement most of EFTA transferred to the Bureau.⁴

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E.⁵ These rules provide a broad suite of protections to consumers who make EFTs, and for accounts from which consumers can make EFTs. An EFT is any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a

¹ 15 U.S.C. 1693k.

² Public Law 95-630, 92 Stat. 3728 (1978).

³ 15 U.S.C. 1693b.

⁴ Public Law 111-203, tit. X, section 1084, 124 Stat. 1376, 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*). See also Dodd-Frank Act section 1061(b), 124 Stat. 2036 (codified at 12 U.S.C. 5581(b)).

⁵ These provisions were originally adopted as 12 CFR part 205 but, upon transfer of authority in the Dodd-Frank Act to implement Regulation E to the Bureau, were renumbered as 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011).

consumer’s account.⁶ In its initial rulemaking to implement EFTA, the Board developed a broad definition of “account,” which closely mirrored the definition of “account” in EFTA.⁷ The definition provides that, subject to certain specific exceptions, an account is a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.⁸

In 1994, the Board amended Regulation E to extend Regulation E’s protections to accounts used for the electronic distribution of government benefits (1994 EBT Rule).⁹ After the Board finalized the 1994 EBT Rule, Congress amended EFTA to exempt “needs-tested” State and local electronic benefit transfer (EBT) programs.¹⁰ The Board subsequently adopted a rule exempting EBT programs established or administered by State or local government agencies from Regulation E. However, all accounts used to distribute benefits for federally administered programs (including Federal needs-tested programs) as well as non-needs tested State and local government benefit programs remained covered by Regulation E.¹¹

On October 5, 2016, the Bureau issued a final rule titled “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)”

⁶ 12 CFR 1005.3(b)(1).

⁷ 44 FR 18468, 18480 (Mar. 28, 1979).

⁸ 12 CFR 1005.2(b)(1).

⁹ 59 FR 10678 (Mar. 7, 1994).

¹⁰ Public Law 104-193, 110 Stat. 2105 (1996).

¹¹ 62 FR 43467 (Aug. 14, 1997).

(2016 Final Rule).¹² The 2016 Final Rule, as subsequently amended,¹³ is referred to herein as the Prepaid Accounts Rule. The Prepaid Accounts Rule, among other things, extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts. The definition of “prepaid account” in the Prepaid Accounts Rule includes government benefit accounts (as defined in § 1005.15(a)(2)), which were already covered by Regulation E since the mid-1990s. The Prepaid Accounts Rule generally maintained the existing provisions specific to government benefit accounts, while adding certain new requirements such as pre-acquisition disclosures. The Prepaid Accounts Rule did not change the compulsory use prohibition in § 1005.10(e) of Regulation E, but did add commentary to clarify the compulsory use prohibition’s application to government benefits (comment 10(e)(2)-2), which is in line with pre-existing commentary regarding payroll card accounts (comment 10(e)(2)-1).

B. Compulsory Use Prohibition

As mentioned above, the compulsory use prohibition of EFTA, as implemented by Regulation E, provides that no person may require a consumer to establish an account for receipt of EFT with a particular financial institution as a condition of receipt of a government benefit.¹⁴ Person, for the purposes of Regulation E and the compulsory use prohibition, means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.¹⁵ The compulsory use prohibition applies to all

¹² 81 FR 83934 (Nov. 22, 2016).

¹³ See 82 FR 18975 (Apr. 25, 2017) and 83 FR 6364 (Feb. 13, 2018). These amendments, among other things, extended the effective date of the Prepaid Accounts Rule to April 1, 2019.

¹⁴ 12 CFR 1005.10(e).

¹⁵ 12 CFR 1005.2(j).

persons, not just financial institutions as defined in Regulation E.¹⁶ The compulsory use prohibition applies to “government benefit accounts,” which is defined as an account established by a government agency for distributing government benefits to a consumer electronically. However, for purposes of Regulation E, including the compulsory use prohibition, a government benefit account 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.¹⁷

The term “needs-tested” is not defined in EFTA or Regulation E. In the preamble to its 2016 Final Rule, the Bureau identified examples of needs-tested government benefit programs that *are not* “government benefit accounts” subject to the compulsory use prohibition, such as those used to distribute funds related to Temporary Assistance for Needy Families (TANF), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the Supplemental Nutrition Assistance Program (SNAP).¹⁸ Accounts established under programs administered by State or local agencies for benefits that are not needs-tested *are* “government benefit accounts” subject to the compulsory use prohibition. Examples of government benefit accounts administered by State or local agencies that are subject to the compulsory use prohibition because they are not needs-tested include accounts used to distribute unemployment insurance, child support, certain prison and jail “gate money” benefits, and pension plan payments.¹⁹

¹⁶ 12 CFR 1005.3(a).

¹⁷ 12 CFR 1005.15(a)(2).

¹⁸ See 81 FR 83934, 83942 (Nov. 22, 2016). While these accounts do not constitute “government benefit accounts” as defined in § 1005.15(a)(2), the Bureau notes that they may still be “prepaid accounts” under one of the other prongs of that definition in § 1005.2(b)(3). To the extent that they are prepaid accounts, the requirements of the Prepaid Accounts Rule apply.

¹⁹ See 81 FR 83934, 83995 (Nov. 22, 2016); *In re JPay, LLC*, File No. 2021-CFPB-0006 (Oct. 19, 2021), www.consumerfinance.gov/enforcement/actions/jpay-llc/.

In addition, all accounts used to distribute funds under federally administered benefits programs (even if those benefits are needs-tested) are “government benefit accounts” subject to the compulsory use prohibition; for example, accounts used to distribute Social Security, Social Security Disability Insurance, and Supplemental Security Income (SSI) payments; or Federal tax credits like the Earned Income Tax Credit (EITC) or the Child Tax Credit (CTC) are subject to the compulsory use prohibition.²⁰

The compulsory use prohibition ensures that consumers receiving the government benefits described above have a choice with respect to how they receive their funds. Government agencies, financial institutions, and other persons have several options available to them to ensure consumers are provided a choice.²¹ For example, a government agency that requires consumers to receive benefits through direct deposit will not violate the compulsory use prohibition if it allows consumers to choose the financial institution they want to use in receiving the direct deposit.²² Alternatively, a government agency may give a consumer the choice of having their benefits deposited at a particular institution (designated by the government agency) so long as the consumer is able to receive their benefits by another means.²³

As the Bureau explained in the 2016 Final Rule, the Bureau believes that consumers are not provided a choice when a consumer is required to receive the *first* payment of government

²⁰ *See id.* at 83995, 84320.

²¹ In 2013, the Bureau issued a Compliance Bulletin on Payroll Card Accounts (Payroll Card Bulletin) to, among other things, reiterate that the compulsory use provision of EFTA and Regulation E prohibits employers, financial institutions, and other persons from mandating that employees receive wages only on a payroll card at a particular institution. As explained in the Payroll Card Bulletin, payroll card accounts are accounts that are established directly or indirectly through an employer, and to which transfers of the consumer’s salary, wages, or other employee compensation are made on a recurring basis. *See CFPB Bulletin 2013-10* (Sept. 12, 2013), www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-payroll-card-accounts/.

²² 12 CFR 1005.10(e)(2) and comment 10(e)(2)-2.

²³ *See id.*

benefits on a prepaid card (or otherwise at a particular institution), even if the consumer can later re-direct the payment to an account of their choice.²⁴ In such a scenario, the consumer does not have a choice with respect to how to receive the first payment of the government benefit; rather, with respect to that first payment, the consumer was required to establish an account with the financial institution that issued the prepaid card as a condition of receiving the funds.²⁵

In addition to having a choice with respect to how consumers receive their government benefits, Regulation E requires that a statement of the consumer's payment options be included in disclosures provided before a consumer acquires a government benefit account. Specifically, that statement must disclose that (1) the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and a statement directing the consumer to tell the agency which option the consumer chooses; or (2) the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive government benefit payments.²⁶ As discussed more below, government benefit accounts are entitled to additional protections and disclosures under Regulation E.

C. Additional Regulation E Protections for Government Benefit Accounts

As mentioned above, government benefit accounts are entitled to the protections of EFTA generally, and Regulation E's provisions applicable to prepaid accounts specifically. The protections in Regulation E for consumers who receive government benefits include the following:

²⁴ 81 FR 83934, 83985 (Nov. 22, 2016).

²⁵ *Id.*

²⁶ 12 CFR 1005.15(c)(2)(i).

- **Disclosures.** Under Regulation E, consumers are entitled to three types of disclosures for government benefit accounts: pre-acquisition disclosures, disclosures on the access device or entry point, and initial disclosures.

Pre-acquisition disclosures for a government benefit account must set forth key information about the account that includes, as mentioned above, a statement regarding the consumer's payment options.²⁷ A government agency must provide the consumer with pre-acquisition disclosures before the consumer acquires a government benefit account.²⁸

Disclosures on the access device or entry point for a government benefit account must contain the name of the financial institution that directly holds the account or issues the access device as well as a website and phone number that the consumer can use to contact that financial institution about the government benefit account.²⁹ These disclosures must be included on the access device or, if there is no physical access device, on a website, mobile application, or other entry point a consumer must visit to access the government benefit account electronically.³⁰

Initial disclosures must set forth comprehensive fee information that may be imposed in connection with the account as well as the information required to be included in the initial disclosures for other accounts subject to Regulation E, which include, among other things, disclosures regarding a consumer's liability for unauthorized EFTs, an error

²⁷ 12 CFR 1005.15(c)(2).

²⁸ 12 CFR 1005.15(c)(1).

²⁹ 12 CFR 1005.15(f), 1005.18(f).

³⁰ 12 CFR 1005.15(f), 1005.18(f)(3).

resolution notice, contact information for the financial institution providing the account, the types of transfers a consumer may make and any limitations on the frequency and dollar amount of transfers, and the fees associated with making.³¹ Initial disclosures must be made at account opening or before the first EFT occurs.³²

- **Change-in-Terms Notices.** Change-in-terms notices are required when a term or condition required to be disclosed in the initial disclosures changes or the change results in an increased fee, increased liability for the consumer, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of EFTs.³³
- **Access to Account History.** Government agencies must either provide a periodic statement as required by Regulation E generally, or must make available to the consumer (1) the consumer's account balance, by telephone; (2) an electronic history, such as through an website, of the consumer's account transactions covering at least 12 months preceding the date the consumer electronically accesses the account; and (3) written account transaction histories provided upon request must cover at least the 24 months preceding the date on which the government agency receives the consumer's request for the account transaction history.³⁴
- **Limited Liability for Unauthorized Transfers and Error Resolution Rights.** With limited modifications regarding the period within which an unauthorized transfer must be

³¹ 12 CFR 1005.15(e)(1) and (f), 1005.18(h)(2)(ii)(A) and (iv). *See generally* 12 CFR 1005.7(b).

³² 12 CFR 1005.7(a).

³³ 12 CFR 1005.8(a)(1); 1005.15(f); 1005.18(f), (h)(2)(ii)(A), (iii), and (iv).

³⁴ 12 CFR 1005.9(b); 1005.15(d)(1); and 1005.18(h)(3)(i).

reported, Regulation E’s limited liability protections and error resolution rights fully apply to government benefit accounts.

II. Conclusion

The Bureau is issuing this Compliance Bulletin to reiterate that the compulsory use prohibition in EFTA applies to government benefit accounts, as defined in Regulation E. The Bureau notes that it is authorized, subject to certain exceptions, to enforce EFTA and Regulation E against any person subject to EFTA and Regulation E, including financial institutions.³⁵ In addition, subject to certain exceptions, the Bureau has enforcement authority over covered persons offering or providing certain consumer financial products or services—including government benefit accounts—under the Consumer Financial Protection Act of 2010.³⁶

/s/ Rohit Chopra

Rohit Chopra,

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³⁵ 15 U.S.C. 1693o(a)(5).

³⁶ Public Law 111-203, tit. X, 124 Stat. 1955 (2010) (12 U.S.C. 5561 through 5567).