

January 25, 2018

Prepaid Rule's Key Changes for Government Benefit Accounts

On October 5, 2016, the Consumer Financial Protection Bureau (Bureau) issued a final rule (2016 Prepaid Rule) amending Regulations E and Z to create comprehensive consumer protections for prepaid accounts, including government benefit accounts that are currently subject to Regulation E. Subsequently, the Bureau issued a final rule extending the general effective date of the 2016 Prepaid Rule to April 1, 2018. On January 25, 2018, the Bureau issued a final rule (2018 Prepaid Amendments) further extending the effective date to April 1, 2019 and making other changes and clarifications. The 2016 Prepaid Rule, as amended by the 2018 Prepaid Amendments, is referred to as the Prepaid Rule in this document.

The Prepaid Rule creates new requirements for government benefit accounts and modifies some existing requirements. The Prepaid Rule does not change which prepaid accounts that distribute government benefits are or are not subject to Regulation E. For government benefit accounts that are currently subject to Regulation E, financial institutions, including government agencies,¹ must continue to comply with existing provisions of Regulation E until they implement the Prepaid Rule's changes. They must implement the changes by the effective date. The changes summarized in this chart are effective April 1, 2019.

This chart summarizes the Prepaid Rule's key changes to Regulation E's and Regulation Z's requirements for government benefit accounts, but is not a substitute for reviewing the Prepaid Rule. Additional implementation resources are available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid>.

¹ This document uses the term "government agency" to refer to any agency that is deemed to be a financial institution under Regulation E as well as to any other financial institution subject to Regulation E with respect to a government benefit account. See 12 CFR 1005.15(a)(1).

SECTION**SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS**

Pre-acquisition disclosures

12 CFR 1005.15(c)

Adds requirement to provide pre-acquisition disclosures to consumers.

Generally, for government benefit accounts, a government agency must provide the consumer with the following before the consumer chooses to receive benefits via a government benefit account:

- A short form disclosure;
- Certain information disclosed in close proximity to the short form disclosure; and
- A long form disclosure.

The short form disclosure sets forth certain key fees and other information about the government benefit account. The Prepaid Rule includes Model Form A-10(a) for the short form disclosure for government benefit accounts. The short form disclosure for government benefit accounts must be in a specific format and must contain the following, among other things:

- A statement that 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. Alternatively, the government agency may provide a statement that 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.
 - The following fees: periodic fee, per purchase fee, ATM withdrawal fees, cash reload fee, ATM balance inquiry fees, customer service fees, and inactivity fee. These fees are referred to as static fees because all government benefit accounts must list them on the short form disclosure, even if the amount of the fee is zero or the fee relates to a feature that is not offered under the specific government benefit account program.
 - The number of fee types in addition to the static fees (excluding any purchase price, any activation fee, and any finance charges for credit) that the consumer may be charged under the specific government benefit account program.
 - With limited exceptions, the two additional fee types that generated the highest revenue from consumers during the previous 24 months. Static fees, any purchase price, any activation fee, any finance charges for credit, and any fee types that generated less than 5 percent of the total revenue from consumers are excluded from this disclosure requirement. These fee types are determined for the specific
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SECTION

SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS

government benefit account program or may be determined across programs with the same fee schedule. Government agencies will need to review fee revenue periodically and may need to update the short form disclosure every 24 months.

- Statements regarding linked overdraft credit features, registration and FDIC/NCUA insurance, the URL for the Bureau's website where the consumer can obtain general information about prepaid accounts (i.e., cfpb.gov/prepaid), and information on where the consumer can find the long form disclosure.

The short form disclosure for government benefit accounts may, but is not required to, contain a statement regarding state-required information or other fee discounts and waivers. This statement directs the consumer to a particular location outside the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee.

Outside but in close proximity to the short form disclosure, the government agency must disclose the name of the financial institution (FI) that directly holds the government benefit account or issues the access device, the name of the government benefit account card program, any purchase price, and any fee for activating the government benefit account.

The long form disclosure sets forth comprehensive fee information as well as certain other key information about the government benefit account. It must include:

- A title, including the name of the prepaid account program;
- Information about all fees that may be imposed in connection with the government benefit account (not just fees for electronic fund transfers) and the conditions under which they may be imposed;
- A statement regarding registration and FDIC/NCUA insurance;
- A statement regarding linked overdraft credit features;
- A statement containing the FI's contact information;
- A statement directing the consumer to cfpb.gov/prepaid for general information about prepaid accounts; and
- A statement directing the consumer to cfpb.gov/complaint and the Bureau's telephone number (1-855-411-2372) to submit a complaint related to a prepaid account.

For government benefit accounts offering an overdraft credit feature, the long form disclosure must also include the Regulation Z disclosures described in 12 CFR 1026.60(e)(1). Sample Form A-10(f) provides an

SECTION

SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS

example of a long form disclosure.

The Prepaid Rule contains special provisions for prepaid accounts, including government benefit accounts, acquired via telephone or in a foreign language. For accounts acquired orally by telephone, certain pre-acquisition disclosures must be provided orally (unless they are provided in written form prior to acquisition).

Generally, government agencies must comply with the E-Sign Act when electronically providing written disclosures (including pre-acquisition disclosures if the government benefit account is not acquired online or via a mobile device).

For government benefit accounts acquired online or via a mobile device, the Prepaid Rule requires government agencies to provide pre-acquisition disclosures electronically (unless they are provided in written form prior to acquisition), but permits government agencies to provide them without E-Sign consent.

Disclosures on access device or entry point

12 CFR 1005.15(f)

Adds requirement to include disclosures 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.

On the access device for the government benefit account (such as the card), the government agency must disclose the name of the FI 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 FI about the government benefit account. If there is not a physical device that accesses the account, these disclosures must be included on the website, mobile application, or other entry point the consumer uses to electronically access the government benefit account.

Initial disclosures

12 CFR 1005.15(e)(1) and (f);
18(h)(2)(ii)(A) and (iv)

Requires additional information in initial disclosures, and revises model clauses.

Government agencies must continue to provide consumers with initial disclosures. These initial disclosures must include the information that is required to be included in the long form disclosure in addition to the information currently required under Regulation E.

Additionally, if the government agency relies on the periodic statement alternative (discussed below), the initial disclosures must contain a modified error resolution notice. The Prepaid Rule revises Model Form A-5.

The Prepaid Rule does not require government agencies to pull and replace prepaid account access devices or packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to April 1, 2019. The Prepaid Rule does, however, require that government agencies provide to consumers initial disclosures updated as a

SECTION	SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS
<p>Change in terms notices</p> <p>12 CFR 1005.15(f); 18(h)(2)(ii)(A), (iii), and (iv)</p>	<p>result of the Prepaid Rule taking effect, in certain circumstances. The Prepaid Rule specifies how and when these disclosures must be provided.</p> <p><i>Expands the circumstances under which a government agency may be required to provide a change in terms notice.</i></p> <p>Government agencies must provide a change in terms notice for any change in a term or condition required to be disclosed in the initial disclosures for the government benefit account. Because additional information is required to be disclosed in the initial disclosures, an agency may be required to provide a change in terms notice in more situations.</p> <p>The Prepaid Rule does not require government agencies to pull and replace prepaid account access devices or packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to April 1, 2019. The Prepaid Rule does, however, require that government agencies provide to consumers notice of certain changes in terms as a result of the Prepaid Rule taking effect, in certain circumstances. The Prepaid Rule specifies how and when this notice must be provided.</p>
<p>Account histories</p> <p>12 CFR 1005.15(d)(1); and 18(h)(3)(i)</p>	<p><i>Requires that electronic account histories be made available under the periodic statement alternative and increases the time period that must be covered in written account histories.</i></p> <p>If a government agency relies on the periodic statement alternative, it must make available to the consumer electronic account transaction histories that cover at least the 12 months preceding the date on which the consumer electronically accesses the account. 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.</p> <p>The Prepaid Rule accommodates government agencies that do not have sufficient data to provide 12 months or 24 months of account history on April 1, 2019. A government agency relying on the periodic statement alternative may make available or provide account transaction histories using the data for the time period it has until the government agency has accumulated the data necessary to comply in full with the requirements.</p>
<p>Content of periodic statements and account histories</p> <p>12 CFR 1005.15(d)(2); and 18(h)(3)(ii)</p>	<p><i>Requires additional fee information in periodic statements and account histories.</i></p> <p>Periodic statements and account transaction histories must disclose the amount of any fees assessed against the account (not just fees for electronic fund transfers), and also must display a summary total of the amount of all fees assessed against the account for the prior calendar month and for the calendar year to date.</p> <p>The Prepaid Rule accommodates government agencies that do not have readily accessible data necessary to calculate summary totals on April 1,</p>

SECTION	SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS
	<p>2019. A government agency may display the summary totals using the data for the time period it has until the government agency has accumulated the data necessary to comply in full with the requirements.</p>
<p>Error resolution and limited liability 12 CFR 1005.15(e)(2), (3), and (4)</p>	<p><i>Adds alternative 120-day period for reporting unauthorized transfers and errors, adds period for reporting unauthorized transfers and errors that begins when consumer electronically accesses the account, and revises model error resolution clauses.</i></p> <p>For a government agency following the periodic statement alternative, the 60-day period for reporting unauthorized transfers begins on the earlier of the date the consumer electronically accesses the account (provided the electronic history reflects the unauthorized transfer) or the date the agency sends the first written account transaction history reflecting the unauthorized transfer. Alternatively, an agency may limit a consumer's liability for any transfer the consumer reports within 120 days after the transfer was credited or debited to the consumer's government benefit account.</p> <p>Similarly, a government agency must respond to a consumer's oral or written notice of error if it is received by the earlier of 60 days from the date the consumer electronically accesses the account (provided the electronic history reflects the alleged error) or the date the agency sends the first written account transaction history reflecting the alleged error. Alternatively, an agency can investigate any oral or written notice of error that it receives within 120 days after an allegedly erroneous transfer was credited or debited to the consumer's government benefit account.</p> <p>Model Form A-5 has been revised to reflect the Prepaid Rule's changes.</p>
<p>Submission of and access to agreements 12 CFR 1005.19</p>	<p><i>Adds requirements regarding submission and consumer access to government benefit account agreements.</i></p> <p>The Prepaid Rule generally requires issuers to submit to the Bureau new and amended government benefit account agreements and notification of withdrawn agreements no later than 30 days after the issuer offers, amends, or ceases to offer the agreement. Additionally, issuers must make a consumer's account agreement available to the consumer either on the issuer's website or in writing upon the consumer's request. The issuer must provide a consumer with a copy of the consumer's account agreement no later than five business days after the issuer receives the consumer's request for the agreement, and the consumer must be able to request the agreement by phone.</p>
<p>Overdraft credit features 12 CFR 1005.15(g); and 17(a) 12 CFR 1026.61 and various other sections of Regulation Z</p>	<p><i>In certain circumstances, subjects government benefit accounts to Regulation Z and its credit card rules if the card for the account can be used to access an overdraft credit feature.</i></p> <p>A prepaid card, including a government benefit card, is a hybrid prepaid-credit card subject to Regulation Z if:</p>

SECTION

SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS

- The card can be used from time to time to access credit from a credit account or credit subaccount that is separate from the prepaid account's asset feature (i.e., from a separate credit feature);
- The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner; and
- The card can be used to access the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, to obtain cash, or to conduct person-to-person (P2P) transfers.

A separate credit feature accessible by a hybrid prepaid-credit card is defined as a "covered separate credit feature" in the Prepaid Rule.

A separate credit feature that is not offered by the prepaid account issuer, its affiliate, or its business partner or that cannot be used to access the separate credit feature in the course of conducting transactions with the card to obtain goods, services, or cash, or to conduct P2P transfers is not a hybrid prepaid-credit card, but might be subject to other provisions of Regulation Z depending on its terms and conditions.

A prepaid card, including a government benefit card, also is a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit through a negative balance on the prepaid account's asset feature unless:

- The prepaid account issuer has a policy and practice of declining to authorize transactions where the consumer has insufficient or unavailable funds to cover the transactions or declining to authorize such transactions except when the amount of the transaction will not cause the account to be negative by more than \$10 or the transaction is conducted when incoming deposits to the prepaid account are pending;
- The prepaid account issuer does not charge certain credit-related fees; and
- The prepaid card cannot access credit from a covered separate credit feature (described above) that is offered by the prepaid account issuer or its affiliate.

This exception is designed to address force pay transactions and other situations where incidental credit is extended as a negative balance on the prepaid account's asset feature.

The Prepaid Rule generally requires prepaid account issuers to structure an overdraft credit feature accessible by a hybrid prepaid-credit card as a separate credit feature, not as a negative balance to a prepaid account. Therefore, under the Prepaid Rule, an overdraft credit feature should only be

SECTION**SUMMARY OF KEY CHANGES FOR GOVERNMENT BENEFIT ACCOUNTS**

structured as a negative balance on a prepaid account, including a government benefit account, if the issuer has a policy and practice of declining to authorize certain transactions as described above, does not impose certain credit-related fees on the asset feature of the prepaid account, and does not allow the prepaid card to access a covered separate credit feature offered by the prepaid account issuer or its affiliate.

A hybrid prepaid-credit card is subject to the requirements set forth in 12 CFR 1026.61. It is a credit card under Regulation Z, and additional requirements under Regulation Z apply.

The Prepaid Rule amends the compulsory use provision under Regulation E so that prepaid account issuers are prohibited from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through covered separate credit features.

A covered separate credit feature accessible by a hybrid prepaid-credit card is not an “overdraft service” for purposes of Regulation E. Therefore, government agencies will not need to provide opt-in notices under Regulation E for covered separate credit features accessible by hybrid prepaid-credit cards, but will need to comply with Regulation Z.
