

CFPB Officially Delays Effective Date of Prepaid Accounts Final Rule

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After signaling earlier this year that it was considering delaying the effective date of the Prepaid Accounts under the Electronic Funds Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) final rule (Prepaid Accounts Rule), the Consumer Financial Protection Bureau (CFPB) has officially delayed the effective date of the Prepaid Accounts Rule for six months to April 1, 2018. This delay comes as the CFPB has been facing significant pressure from industry, the US Congress, and consumer groups to delay or (in the case of consumer groups) retain the original effective date of the rule.

A number of prepaid access industry participants had advocated for a delay in the effective date due to concerns about the ability to remove existing noncompliant packaging and disclosures from the marketplace and distribute compliant packaging and disclosures. Although the Prepaid Accounts Rule exempts noncompliant packaging that was produced in the normal course of business prior to the effective date of the rule, the industry indicated that it was concerned about the possible liability for noncompliant packaging remaining in the marketplace.

The CFPB also will revisit, through separate notice and comment, two other substantive issues:

1. Applicability of the rule to the linking of credit cards to digital wallets
2. Error resolution and limitations on liability for prepaid accounts that cannot be registered

Industry participants identified these and a number of other issues as presenting compliance challenges or uncertainty, or risking consumer confusion when implemented. The CFPB specifically has left open the possibility that it will consider other substantive changes to the Prepaid Accounts Rule but did not provide more detail on which issues might be subject to further consideration.

By delaying the Prepaid Accounts Rule's effective date, the CFPB also may have avoided the entire rule being reversed under the Congressional Review Act—although the ability of Congress to include the Prepaid Accounts Rule in the group of Obama administration regulations that are overturned was

questionable due to the upcoming May 9 deadline, competing congressional priorities, and concerns that overturning the rule could be construed as anti-consumer.

In the meantime, prepaid account card issuers and service providers should use the Prepaid Access Rule as insight into the CFPB's thinking on sufficient disclosures and practices, as the delay does not prevent the CFPB from bringing enforcement actions for unfair, deceptive, or abusive acts or practices in connection with prepaid accounts under its broad UDAAP authority.

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