What Prepaid Accounts Are Subject to the New Prepaid Rules? What you need to know to be ready.

Mar 23, 2017

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Prepaid cards are increasingly popular—they are frequently used instead of traditional bank accounts to shop, withdraw cash from ATMs, pay for healthcare costs from health savings accounts, distribute natural disaster aid, and pay wages.

Not surprisingly, the cards—and the need for consumer protection against unfair practices—have caught the attention of the CFPB, which in turn has caught the attention of certain members of Congress and the industry.

Last fall, the CFPB issued new prepaid account rules (the "Prepaid Rules"), slated to become effective on **October 1, 2017**. Earlier this year, to help companies understand the new regulations and prepare for implementation, the CFPB published a Compliance Guide for Small Entities (the "Guide"). Now, in response to continued opposition from certain Congressional members and the industry, the CFPB has delayed implementation to April 1, 2019, to permit a longer implementation period. Based upon these two moves, it is apparent that the CFPB has acknowledged the complexity of its proposed regulatory treatment of this dynamic sector of the payments industry.

Generally, the Prepaid Rules impose requirements upon "financial institutions" that hold the prepaid accounts, as defined by Regulation E. The Guide includes a discussion of "prepaid accounts," which are:

- payroll card accounts
- government benefit accounts
- an account marketed or labeled as prepaid and that is redeemable at multiple, unaffiliated merchants, and
- an account issued on a prepaid basis in a specified amount or that can be loaded with funds, with a primary function of conducting transactions with multiple, unaffiliated merchants

for goods or services, at ATMs or P2P transfers, and is not a bank account.

To be a “prepaid account,” it must be established primarily for personal, family or household purposes, and be held directly or indirectly by a financial institution, and not qualify for an exclusion. The Prepaid Rules do not cover other types of prepaid cards common in the marketplace, and excludes the following types of prepaid accounts:

- store gift cards, gift certificates, or loyalty, award, or promotional gift cards;
- checking accounts, share draft accounts, or negotiable order of withdrawal accounts;
- accounts loaded only with funds for benefits, such as health savings accounts or parking reimbursement;
- accounts established by a third party for qualified disaster relief payments;
- accounts established by the United States government to conduct closed-loop transactions on United States military installations or similar government facilities; and
- accounts established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

The CFPB has also issued a helpful Prepaid Account Coverage Chart, consisting of a flow chart to help analyze whether the Prepaid Rules apply to a particular product.

The Guide discusses the third and fourth prong of the prepaid account definition at some length, and confronts the issues presented by these prongs. For example, does an account qualify as redeemable at multiple, unaffiliated markets when a group of merchants are related by common ownership or control or otherwise share some affiliation? Merchants can be affiliated if they agree by contract or otherwise to redeem cards or other devices bearing the same mark, logo or brand (other than that of a payment network).

As to the primary function of an account, the Guide clarifies that P2P transfers include C2C and C2B transfers. It also states that to meet the primary function test, the account's primary function must be to provide a consumer with general transaction capability. How the consumer actually uses the account, and the frequency of his or her use is not relevant. One must look to the primary function of the account. Thus, a university-issued card that can access two accounts, one of which is an open-loop account usable with multiple unaffiliated merchants for goods or services, satisfies the test. The other account, which is limited to closed-loop transactions on the university's campus, would not satisfy the test. This means only the open-loop account— not the card itself or the closed-loop account, would be subject to the new Prepaid Rules.

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