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December 13, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Development
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (Bureau) entitled “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)” (RIN: 3170-AA22). We received the rule on November 30, 2016. It was published in the *Federal Register* as a final rule; official interpretations on November 22, 2016. 81 Fed. Reg. 83,934. The rule is effective on October 1, 2017, except for the addition of section 1005.19(b), which is delayed until October 1, 2018.

The final rule creates comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act; Regulation Z, which implements the Truth in Lending Act; and the official interpretations to those regulations. The final rule modifies general Regulation E requirements to create tailored provisions governing disclosures, limited liability and error resolution, and periodic statements, and adds new requirements regarding the posting of account agreements. Additionally, the final rule regulates overdraft credit features that may be offered in conjunction with prepaid accounts. According to the Bureau, subject to certain exceptions, such credit features will be covered under Regulation Z where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with a prepaid card.

Enclosed is our assessment of the Bureau’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Bureau complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Sue-Yun Ahn
Senior Counsel, Legal Division
Bureau of Consumer Financial Protection

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
BUREAU OF CONSUMER FINANCIAL PROTECTION
ENTITLED
“PREPAID ACCOUNTS UNDER THE ELECTRONIC FUND TRANSFER ACT
(REGULATION E) AND THE TRUTH IN LENDING ACT (REGULATION Z)”
(RIN: 3170-AA22)

(i) Cost-benefit analysis

The Bureau of Consumer Financial Protection (Bureau) discussed the costs and benefits of this final rule. The Bureau considered the benefits, costs, and impacts of the following major provisions of the final rule: (1) the establishment of certain disclosures that financial institutions are required to provide to consumers (or, in certain circumstances, provide consumers access to) prior to the acquisition of a prepaid account and modifications of initial disclosures that are provided at account acquisition; (2) the application of Regulation E's periodic statement requirement to prepaid accounts and the establishment of an alternative that requires financial institutions to provide consumers access to certain types of account information; (3) the extension of Regulation E's limited liability and error resolution regime to all prepaid accounts, including provisional credit requirements in most circumstances; (4) the requirement that all issuers of prepaid accounts submit their prepaid account agreements to the Bureau on an ongoing basis, post publicly available prepaid account agreements on their own Web sites, and in limited circumstances, respond to consumers' requests for written copies of their account agreements; and (5) the modification and application of particular Regulation E and Regulation Z provisions to covered separate credit features accessible by a hybrid prepaid-credit card. The Bureau notes that, in some instances, there are limited data available to inform the quantification of the potential benefits, costs, and impacts. Moreover, the Bureau states that some potential benefits are difficult to quantify, but that where data are limited, it generally provided a qualitative discussion of the final rule's benefits, costs, and impacts.

The final rule amends both Regulation E, which implements the Electronic Funds Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA), as well as the official interpretation to those regulations. According to the Bureau, the final rule creates comprehensive consumer protections for prepaid financial products.

In applying the consumer protections in Regulation E to a broader set of consumer accounts, the Bureau states that it furthers the statutory purposes of EFTA, which include providing a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfers (EFT) systems and providing individual consumer rights. In addition, the Bureau believes that applying the consumer protections articulated in Regulation Z to covered separate credit features accessible by a hybrid prepaid-credit card conforms to TILA's statutory purposes, which include assuring a meaningful disclosure of credit terms, avoiding the uninformed use of credit, and protecting consumers against inaccurate and unfair billing and credit card practices.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Bureau certified that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an initial regulatory flexibility analysis was not required. In the proposed rule, the Bureau requested comment regarding its methodology for estimating burden on small entities as well as relevant data. The Bureau states that it received little comment with respect to these issues but addressed the comments received and integrated additional information provided by commenters into its analysis of these issues when available and informative. Upon considering relevant comments as well as the modifications to the proposed rule that were made in developing the final rule, the conclusion that the rule would not have a significant economic impact on a substantial number of small entities was unchanged. Therefore, the Bureau concluded that a final regulatory flexibility analysis was also not required.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Act does not apply to independent regulatory agencies.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On December 23, 2014, a notice of the proposed rule (NOPR) was published in the *Federal Register*. 79 Fed. Reg. 77,102. The comment period for the proposal expired on March 23, 2015. However, the Bureau states that it considered *ex parte* comments submitted after the deadline as part of its deliberations. The Bureau states that it received over 65,000 comments on the proposal during the comment period. Approximately 150 comments were unique, detailed comment letters representing diverse interests from consumer advocacy groups; national and regional industry trade associations; prepaid industry members including issuing banks and credit unions, program managers, payment networks, and payment processors; digital wallet providers; virtual currency companies; non-partisan research and advocacy organizations; Members of Congress; state and local government agencies; and individual consumers. In addition, the Bureau also considered comments received after the comment period closed via approximately 65 *ex parte* submissions, meetings, and telephone conferences. Materials on the record, including *ex parte* submissions and summaries of *ex parte* meetings and telephone conferences, are publicly available at <http://www.regulations.gov>. The Bureau states that it considered all the comments it received regarding the proposal, made certain modifications, and adopted the final rule. The Bureau previously published an advance notice of proposed rulemaking (ANPR) that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable (GPR) cards and other prepaid products. 77 Fed. Reg. 30,923 (May 24, 2012). The Bureau received over 220 comments on the prepaid ANPR. Industry commenters, including banks and credit unions, prepaid program managers, payment networks and industry trade associations, submitted the majority of comments. The Bureau also states that it received comment letters from consumer and other interest groups, as well as several individual consumers. The Bureau states that it evaluated the comments received in response to the prepaid ANPR in its preparation of the proposed rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements pursuant to PRA. The final rule amends 12 C.F.R. part 1005, Electronic Fund Transfers (Regulation E) and 12 C.F.R. part 1026, Truth in Lending (Regulation Z). Regulation E and Regulation Z currently contain collections of information approved by the Office of Management and Budget (OMB). The Bureau's OMB control number for Regulation E is 3170-0014 (Electronic Fund Transfer Act (Regulation E) 12 C.F.R. part 1005). The Bureau's OMB control number for Regulation Z is 3170-0015 (Truth in Lending Act (Regulation Z) 12 C.F.R. part 1026). The final rule amends the collections of information currently in Regulation E and Regulation Z subparts B and G. The affected public includes businesses, government agencies, and other for-profit and not-for-profit organizations. The Bureau states that it is not aware of any small not-for-profit organizations, aside from credit unions, that are directly affected by the final rule.

According to the Bureau, it generally accounts for the paperwork burden associated with Regulation E and Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository financial institutions and insured credit unions with more than \$10 billion in total assets, their depository institution affiliates (together, the Bureau depository respondents), and certain non-depository financial institutions (the Bureau non-depository respondents), such as prepaid account program managers. The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository financial institutions under Regulation E and Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden on Bureau non-depository respondents.

For Regulation E, using the Bureau's burden estimation methodology discussed below, the estimated burden for the approximately 181 prepaid account providers likely subject to the final rule, including Bureau respondents, is a one-time burden of 155,347 hours and ongoing burden of 14,304 hours. The Bureau allocates to itself 76,343 hours of one-time burden--Bureau depository respondents account for 15,504 hours while Bureau non-depository respondents account for 121,678 hours, half of which the Bureau allocates to itself and half to FTC. The remaining one-time burden is allocated to the other federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority. Similarly, the Bureau allocates to itself 7,207 hours of ongoing burden--Bureau depository respondents account for 1,410 hours while Bureau non-depository respondents account for 11,595 hours, half of which the Bureau allocates to itself and half to FTC. The remaining ongoing burden is allocated to the other federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority. For Regulation Z, using the Bureau's burden estimation methodology, the estimated burden for three non-depository institutions subject to the final rule would be a one-time burden of 460 hours and ongoing burden of 6,491 hours. The Bureau allocated to itself half of both these burden estimates (230 hours and 3,245 hours, respectively) and half to FTC.

The aggregate estimates of total burdens are based on estimated burden hours that are averages across respondents. The Bureau states that it expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent. The Bureau used existing burden estimates, information obtained through industry research and outreach, and information provided in comments on the proposed rule to develop the figures.

Most prepaid account programs already comply with the current requirements of Regulation E, as they apply to payroll card accounts. According to the Bureau, the additional requirements in the final rule would, with a few exceptions, require small extensions or revisions to existing practices after the initial costs. Regarding the new requirements in Regulation E, the Bureau's PRA burden estimation methodology assumes that the one-time burden from the short form and long form disclosure requirements and the access to account information requirement depends on the number of fee schedules. The number of responses-per-respondent for these information collections is the number of fee schedules per program manager. The one-time burden from the error resolution requirements arises from the relatively few programs that do not already meet the requirements. The number of responses-per-respondent for this information collection is the number of non-compliant programs per program manager. The Bureau assumed that the one-time burden from the rolling submission of account agreements, which includes fee schedules, depends primarily on the fee schedule, and therefore the number of responses-per-respondent for this information collection is the number of fee schedules per issuer. Ongoing burden may increase with the above factors as well as with the number of customers.

Statutory authorization for the rule

The Bureau promulgated the final rule pursuant to its authority under sections 904(a), 904(b), 904(c), and 905(a) of the Electronic Funds Transfer Act (EFTA); sections 1022 and 1032 of the Dodd-Frank Act; and section 105(a) of the Truth in Lending Act (TILA).

Executive Order No. 12,866 (Regulatory Planning and Review)

The Order does not apply to independent regulatory agencies.

Executive Order No. 13,132 (Federalism)

The Order does not apply to independent regulatory agencies.