

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Parts 1005 and 1026**

**[Docket No. CFPB-2017-0008]**

**RIN 3170-AA69**

**Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation; delay of effective date.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing this final rule to delay the October 1, 2017 effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) by six months, to April 1, 2018.

**DATES:** The amendments in this final rule are effective on April 1, 2018. Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, the general effective date of the final rule published on November 22, 2016 (81 FR 83934) is delayed from October 1, 2017 to April 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Devlin and Yaritza Velez, Counsels, and Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202-435-7700.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of the Final Rule**

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund

Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA) (Prepaid Accounts Final Rule).<sup>1</sup> When it was issued, the Prepaid Accounts Final Rule had a general effective date of October 1, 2017. Through its efforts to support industry implementation of the Prepaid Accounts Final Rule, the Bureau learned that some industry participants believed that they would have difficulty complying with certain provisions of the Prepaid Accounts Final Rule that would have gone into effect on October 1, 2017. In order to facilitate compliance with the Prepaid Accounts Final Rule, and to allow an opportunity for the Bureau to assess whether any additional adjustments to the Rule are appropriate, the Bureau proposed to extend the general effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018 (Effective Date NPRM).<sup>2</sup>

Based on comments received, the Bureau is issuing this final rule to delay the October 1, 2017 effective date for the Prepaid Accounts Final Rule by six months, to April 1, 2018. The Bureau is also making conforming amendments to certain regulatory text and commentary adopted in the Prepaid Accounts Final Rule to reflect the effective date delay.

The Bureau plans to release a notice of proposed rulemaking address at least two issues that have been identified as areas where the Prepaid Accounts Final Rule may be posing particular complexities for implementation. When the Bureau does so it will also seek comment on whether any further extension of the effective date is needed in light of the specific changes proposed.

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<sup>1</sup> 81 FR 83934 (Nov. 22, 2016).

<sup>2</sup> 82 FR 13782 (Mar. 15, 2017).

## II. Background

### A. *The Prepaid Accounts Rulemaking*

In the Prepaid Accounts Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded Regulation Z's coverage to overdraft credit features that may be offered in conjunction with prepaid accounts.<sup>3</sup> Upon issuing the Prepaid Accounts Final Rule, the Bureau initiated robust efforts to support industry implementation.<sup>4</sup> Information regarding the Bureau's Prepaid Accounts Final Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation website at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>.

### B. *Effective Date Delay*

As published, the Prepaid Accounts Final Rule had a general effective date of October 1, 2017. As discussed in the Effective Date NPRM, as part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. As a result of those discussions, the Bureau learned that some industry participants were concerned for a variety of reasons that they would have difficulty in complying with certain

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<sup>3</sup> 81 FR 83934 (Nov. 22, 2016). The Bureau released a proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014. 79 FR 77102 (Dec. 23, 2014) (Prepaid Accounts NPRM). The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

<sup>4</sup> These on-going efforts include: (1) the publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Final Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Final Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, a summary of the rule's effective date provisions, and a guide to preparing the short form disclosure; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Final Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums.

aspects of the Prepaid Accounts Final Rule by October 1, 2017 while also ensuring continued availability of their prepaid products and with minimal disruption to consumers. For example, although the Bureau put in place an exception in Regulation E § 1005.18(h)(2) pursuant to which financial institutions are not required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017, some industry participants indicated that they believed that they should in fact pull and replace non-compliant packaging due to concerns about legal and regulatory exposure at both the Federal and State level, and in particular due to developments following release of the Prepaid Accounts Final Rule. Industry had also raised related concerns regarding the constrained production capacity of packaging manufacturers and other supply chain limitations resulting from increased industry demand leading up to the October 1, 2017 effective date.

In addition, in the course of working to implement the Prepaid Accounts Final Rule, some industry participants raised concerns about what they describe as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices, including those newly adopted, that they did not fully address in their comment letters on the Prepaid Accounts NPRM, which may complicate implementation and affect consumers.

Based on its initial outreach to industry before issuing the Effective Date NPRM, the Bureau believed that a six-month delay would be sufficient for industry participants to ensure that they can comply with the Prepaid Accounts Final Rule with minimal disruption to consumers. The Bureau explained that, in particular, a six-month extension would both allow more time for package printing and allow pull-and-replace processes at retail locations to occur

after the winter holiday season, which is a particularly busy time for retailers. Indeed, the Bureau understands that industry often effectuates pull-and-replace processes in the spring for precisely this reason. The Bureau also believed that a six-month delay would allow the Bureau adequate opportunity to consider possible additional amendments to the Prepaid Accounts Final Rule, and for industry to implement any such changes, without unnecessary disruption to consumers' access to, and use of, prepaid accounts.

The Bureau did not propose to delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018. The Bureau expected to have its agreement submission process in place by October 1, 2018, and, as discussed in the Effective Date NPRM, the Bureau's pre-proposal outreach had not indicated that industry participants were concerned that they would not be able to meet the agreement submission effective date.

In the Effective Date NPRM, the Bureau did not propose to amend any other substantive requirements of the Prepaid Accounts Final Rule. The purpose of that notice was not to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. Rather, the Bureau stated that it would continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Final Rule.

### **III. Summary of the Rulemaking Process, Comments Received, and the Final Rule**

#### *A. Summary of the Rulemaking Process*

On March 9, 2017, the Bureau released the Effective Date NPRM with a request for

public comment. It was published in the *Federal Register* on March 15, 2017.<sup>5</sup> The Bureau solicited comment on all aspects of the Effective Date NPRM. In particular, the Bureau asked commenters to provide specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts on industry, consumers, and other stakeholders of the Effective Date NPRM. The Bureau also solicited comment about the impact of the Effective Date NPRM on consumers who use prepaid accounts. The Bureau solicited comment regarding the proposed extension of the general effective date to April 1, 2018, as well as alternative dates for extension.

#### *B. Comments Received*

The comment period for the Effective Date NPRM closed on April 5, 2017. The Bureau received 28 comment letters from consumer advocacy groups; national and regional trade associations; members of the prepaid industry, including issuing banks and credit unions, program managers, and a digital wallet provider; several think tanks; an association of State financial regulators; a group of State attorneys general; and several commenters who did not identify their affiliations.<sup>6</sup>

Industry and trade association commenters all supported the Bureau's proposal to delay the effective date of most provisions of the Prepaid Accounts Final Rule; many expressly supported the Bureau's proposed six-month delay. A number of commenters cited the Bureau's concerns that some industry participants may need additional time to comply with the rule, in particular stating that providers might need to pull and replace non-compliant packaging notwithstanding the exception in the Prepaid Accounts Final Rule for prepaid account access

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<sup>5</sup> 82 FR 13782 (Mar. 15, 2017).

<sup>6</sup> These comment letters are publicly available at <https://www.regulations.gov/>.

devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to the effective date of the rule.

A prepaid issuer, a digital wallet provider, and a trade association each expressed support for a six-month delay of the effective date, contingent on the Bureau also revisiting the Prepaid Accounts Final Rule to address certain substantive provisions of the rule that they argued required changes to disclosures and business models that could not be implemented by April 1, 2018. The provisions that they cited relate to the linking of credit cards with digital wallets that are capable of storing funds and to error resolution and limitations on liability for prepaid accounts where the financial institution has not completed its consumer identification and verification process with respect to the account. These commenters requested a 12-month delay to the Prepaid Accounts Final Rule's general effective date if the Bureau were unwilling to revisit those issues.

Some industry and trade association commenters argued that the Bureau should delay the effective date further by 12 months; two trade associations advocated for an 18-month delay. The commenters who requested a delay longer than six months cited a variety of reasons, including, for example, the time needed to develop and review new and updated disclosures and related materials; time required to retool J-hook card packaging to accommodate disclosures required by the rule; limitations in production capacity to print new prepaid card collateral; and the time needed to coordinate system updates with processors, vendors, and other service providers. A few commenters cited other reasons as well, such as the need to develop new systems and operational processes related to providing longer account transaction histories and calculating summary totals of fees. One trade association stated that providers need to develop an automated process to track cardholder agreements for purposes of submitting those

agreements to the Bureau, which it stated would need to be in place as of the October 1, 2017 effective date in order to adequately track agreements. Another trade association commenter urged the Bureau to delay the effective date for longer than six months so that the Bureau could conduct a comprehensive study on the effects that the Prepaid Accounts Final Rule will have on consumers, specifically related to availability of prepaid accounts and their costs to consumers.

One credit union trade association commenter, requesting an 18-month extension, cited concerns that the proposed delayed effective date would coincide with the effective date of other regulations promulgated by the Bureau, in particular the provisions of the Bureau's mortgage servicing rule pertaining to successors-in-interest and the provision of periodic statements to consumers who have filed for bankruptcy. An association of State financial regulators also stated the compliance investments necessitated by other regulations such as the increased data collection/reporting requirements under the Home Mortgage Disclosure Act and additional identification requirements under the Bank Secrecy Act/Customer Due Diligence rule promulgated by another federal agency as a reason for its support of a six-month delay.

A coalition of 27 consumer advocacy groups urged the Bureau to implement the Prepaid Accounts Final Rule as soon as possible, citing the benefits of the rule for consumers who use prepaid accounts, and expressing concern that further delays in the effective date would cause harm to consumers. They stated that, if an extension is warranted, the Bureau should give the minimum extension necessary—which in their view would be no longer than the proposed six months—and not provide any further extensions. Another consumer advocacy group supported the Bureau's proposal to delay the rule's effective date by six months while reiterating that expeditious implementation of the Prepaid Accounts Final Rule remains essential to providing comprehensive consumer protections to users of prepaid accounts.



Two think tanks urged the Bureau to consider the possible negative effects on consumers of any delay in the effective date of the rule. Another think tank supported the six-month delay, stating that otherwise there is a risk that providers might pull cards without replacing them, thus hampering consumers' access to those products.

The commenters who did not identify their affiliation varied in their comments, either expressing support for the proposed delay in effective date or arguing that the effective date should not be extended to ensure that consumers receive the protections of the Prepaid Accounts Final Rule. A group of State attorneys general expressed support for the rule generally but did not comment specifically on the effective date of the rule.

*Safe harbor for early compliance.* Two trade association commenters urged the Bureau to establish a safe harbor for prepaid providers that comply with the Prepaid Accounts Final Rule (or portions of it) prior to the rule's effective date. These commenters expressed concerns that prepaid providers may be exposed to potential liability if they comply with the rule prior to the effective date, as they suggested the possibility that there may be some conflict between the Prepaid Accounts Final Rule and current requirements for payroll card accounts and government benefit accounts, though they did not provide any specific examples. One commenter stated that early compliance would benefit consumers and should not be discouraged.

*Section 1005.19(f)(2).* The Bureau did not propose to delay the October 1, 2018 effective date of the requirement that prepaid account issuers submit prepaid account agreements to the Bureau, which is set forth in Regulation E § 1005.19(f)(2). The Bureau did, however, solicit comment on whether it should also delay that effective date. Commenters generally did not express concerns that the October 1, 2018 agreement submission effective date would create compliance issues. One of the trade association commenters advocating for an 18-month delay

of the Prepaid Accounts Final Rule's general effective date suggested that the Bureau contemplate a proportional delay for § 1005.19(f)(2), stating that it would help relieve pressure on credit unions that may need to submit credit card agreements pursuant to Regulation Z § 1026.58 for covered separate credit features accessible by hybrid prepaid-credit cards. Another trade association expressed concerns pertaining to general compliance with the requirement to submit prepaid account agreements to the Bureau, but did not suggest a delay to the effective date in § 1005.19(f)(2).

A program manager expressed concerns about the challenges it is facing in complying with the agreement posting requirement in § 1005.19, which appears to be due, at least in part, to the number of prepaid account agreements it manages. This commenter suggested making the effective dates set forth in § 1005.19(f)(1) and (2) consistent, but did not request that the Bureau delay the effective date for the agreement submission requirement. A commenter who did not identify his or her affiliation supported the Bureau's proposal not to delay the effective date of the agreement submission requirement, but suggested that the Bureau revisit that decision six months in advance of the effective date.

*Substantive changes to the Prepaid Accounts Final Rule.* As noted above, the Bureau did not propose in the Effective Date NPRM to amend any other substantive provisions of the Prepaid Accounts Final Rule, nor was the purpose of the Effective Date NPRM to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. Nonetheless, many commenters used their comment letters to advocate for retaining, modifying, or eliminating various provisions of the rule. Commenters also suggested that the Bureau could use the additional time provided by delaying the effective date of the Prepaid Accounts Final Rule to revisit these issues.

### *C. The Final Rule*

For the reasons set forth herein, the Bureau is finalizing as proposed a six-month delay of the October 1, 2017 effective date of the Prepaid Accounts Final Rule. In order to effect this change, the Bureau is also amending Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary, to reflect the delayed effective date.

The Bureau continues to believe that the Prepaid Accounts Final Rule will provide significant benefits to consumers and that, therefore, expeditious implementation remains essential to provide comprehensive consumer protections to users of prepaid accounts. Having reviewed the comments received, the Bureau continues to believe that a six-month delay of the effective date, when added to the nearly 12 months previously provided for in the Prepaid Accounts Final Rule, allows sufficient time for industry to implement the rule and provides for an appropriate balance between the interests of the consumers who will receive the benefits of the rule and the needs of industry for an adequate implementation period. The Bureau appreciates the issues raised by commenters advocating for a longer delay to the Prepaid Accounts Final Rule's effective date, but does not believe that a longer delay is in fact warranted at this time.

Based on industry outreach efforts and the comments received in response to the Effective Date NPRM, the Bureau has determined that it should revisit at least two substantive issues through a separate notice and comment rulemaking process. Those issues relate to the linking of credit cards into digital wallets that are capable of storing funds and to error resolution and limitations on liability for prepaid accounts that cannot be registered, have not yet been registered, or for which consumers have attempted but have not successfully completed the registration process. The Bureau is continuing to evaluate other concerns raised by industry and

other stakeholders, including those discussed in comments on the Effective Date NPRM, and may address a limited number of other topics as well in its forthcoming proposal. The Bureau also will seek comment on whether any further extension of the effective date is needed in light of the specific changes proposed.

*Safe harbor for early compliance.* The Bureau agrees with commenters that early compliance with the Prepaid Accounts Final Rule could benefit both industry and consumers. The Bureau is not aware of any conflicts between the requirements of the Prepaid Accounts Final Rule and the current regulations applying to accounts that will be covered by the rule, nor were any specified by commenters. To the extent that financial institutions are engaged in consumer-friendly practices that are not specifically required under current regulations, the Bureau encourages those institutions to continue those practices, whether or not those practices are required by the Prepaid Accounts Final Rule. For example, financial institutions that already provide access to more than 60 days of account history to all current accountholders, or that provide full Regulation E error resolution and limited liability protections to their accountholders, are encouraged to continue to do so in advance of the effective date. However, financial institutions should ensure that their disclosures do not suggest to consumers that they are engaged in a consumer-friendly practice that they have not yet implemented.

The Bureau notes that the Prepaid Accounts Final Rule already contemplates that some aspects of the rule will be phased in, particularly with respect to the exception that does not require financial institutions to pull and replace non-compliant packaging that was manufactured, printed, or otherwise produced in the normal course of business prior to the effective date of the rule. Thus, the Bureau is not adding an explicit safe harbor for early compliance, although the Bureau does not believe that the absence of one will prevent financial institutions from

implementing practices that are required by the Prepaid Accounts Final Rule prior to the effective date. The Bureau will seek comment in its forthcoming proposal on whether there are in fact any conflicts between requirements of the Prepaid Accounts Final Rule and the current regulations applying to accounts that will be covered by the rule that would merit a more formal safe harbor.

*Section 1005.19(f)(2)*. The Bureau is maintaining the October 1, 2018 effective date set forth in Regulation E § 1005.19(f)(2) for the agreement submission requirement, as proposed. In the Effective Date NPRM, the Bureau indicated that its industry outreach had not indicated that the effective date of this provision was causing significant compliance concerns in and of itself, and the comments to the Effective Date NPRM support that conclusion. The Bureau does not believe that the few concerns raised by commenters warrant a delay to the October 1, 2018 effective date.

#### **IV. Legal Authority**

The Bureau is exercising its rulemaking authority pursuant to EFTA section 904(a) and (c), Dodd-Frank Act sections 1022(b)(1) and 1032(a), and TILA section 105(a) to delay the effective date of the Prepaid Accounts Final Rule.

The legal authority for the Prepaid Accounts Final Rule is described in detail in the Prepaid Accounts Final Rule's **SUPPLEMENTARY INFORMATION**.<sup>7</sup> As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)<sup>8</sup> authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provide that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for

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<sup>7</sup> See, e.g., 81 FR 83934, 83958-60 (Nov. 22, 2016).

<sup>8</sup> 15 U.S.C. 1593b(a).

any class of electronic fund transfers or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. As amended by the Dodd-Frank Act, TILA section 105(a)<sup>9</sup> directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.<sup>10</sup> Section 1032(a) of the Dodd-Frank Act<sup>11</sup> provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Additionally, under Dodd-Frank Act section 1022(b)(1),<sup>12</sup> the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

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<sup>9</sup> 15 U.S.C. 1604(a).

<sup>10</sup> TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required by parts A, D, or E of TILA shall have an effective date “of that October 1 which follows by at least six months the date of promulgation.” Section 105(d) further provides that the Bureau “may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements.” Although the Bureau desires to have the rule take effect as soon as feasible given its value for consumers, the Bureau is using its discretion under TILA section 105(d) to lengthen the period in this instance. The Bureau believes that the changes the Prepaid Accounts Final Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

<sup>11</sup> 12 U.S.C. 5532(a).

<sup>12</sup> 12 U.S.C. 5512(b)(1).

EFTA, TILA, and Title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in finalizing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)<sup>13</sup> to prescribe rules under EFTA, TILA, and Title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act<sup>14</sup> prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

## **V. Provisions Affected by the Final Rule**

### *1005.18 Requirements for Financial Institutions Offering Prepaid Accounts*

#### *18(b) Pre-Acquisition Disclosure Requirements*

##### *18(b)(2) Short Form Disclosure Content*

##### *18(b)(2)(ix) Disclosure of Additional Fee Types*

Regulation E § 1005.18(b)(2) describes the short form disclosure content requirements for prepaid accounts. Section 1005.18(b)(2)(ix) contains requirements specifically regarding additional fee types. Section 1005.18(b)(2)(ix)(D) describes the timing requirements for the initial assessment of an additional fee types disclosure, and § 1005.18(b)(2)(ix)(E) describes the timing for the periodic reassessment and update of additional fee types disclosures. The Bureau is revising the dates in the regulatory text and headings in § 1005.18(b)(2)(ix)(D)(1) through (3) and in comments 18(b)(2)(ix)(D)(1)-1, 18(b)(2)(ix)(D)(2)-1, 18(b)(2)(ix)(E)(2)-1.i through iii, and 18(b)(2)(ix)(E)(3)-1 to reflect the new April 1, 2018 effective date. The Bureau is not, however, changing the October 1, 2014 date in § 1005.18(b)(2)(ix)(D)(1) and related commentary, which is the beginning of the time frame for which financial institutions may

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<sup>13</sup> 12 U.S.C. 5512(b).

<sup>14</sup> 12 U.S.C. 5512(b)(2).

calculate additional fee types to disclose, so as not to inconvenience financial institutions that have already prepared their additional fee types calculations in reliance on that date.

*18(h) Effective Date and Special Transition Rules for Disclosure Provisions*

Regulation E § 1005.18(h) sets forth several provisions to make clearer the Prepaid Accounts Final Rule's general October 1, 2017 effective date. The Bureau is revising the dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)-1, 2, 6.i and 6.ii to reflect the new April 1, 2018 effective date.

*1005.19 Internet Posting of Prepaid Account Agreements*

*19(f) Effective Date*

*19(f)(1) Effective Date*

Regulation E § 1005.19(f)(1) sets forth the general effective date for the prepaid account agreement posting requirements in § 1005.19, other than the delayed requirement to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b), as addressed in § 1005.19(f)(2). The Bureau is revising the date in the regulatory text of § 1005.19(f)(1) to reflect the new April 1, 2018 effective date. As discussed above, the Bureau is not delaying the October 1, 2018 date for submission of agreements to the Bureau.

**VI. Effective Date**

The Bureau is delaying the October 1, 2017 effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. Additionally, the Bureau is making conforming amendments to Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary, as described above, which will also become effective April 1, 2018. This final rule with respect to the effective date of the Prepaid Accounts Final Rule will become effective 30



days after publication in the *Federal Register*, as required under section 553(d) of the Administrative Procedure Act.<sup>15</sup>

## **VII. Dodd-Frank Act Section 1022(b) Analysis**

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The Bureau consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the Prepaid Accounts Final Rule's major provisions.<sup>16</sup> The Bureau also previously considered the benefits, costs, and impacts of delaying the effective date in the Effective Date NPRM and solicited comment regarding that discussion.<sup>17</sup> Where comments discuss the benefits or costs of delaying the effective date in the context of commenting on the merits of the provision, the Bureau has

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<sup>15</sup> 5 U.S.C. 553(d).

<sup>16</sup> 81 FR 83934, 84269 (Nov. 22, 2016).

<sup>17</sup> 82 FR 13782, 13785 (Mar. 15, 2017).

addressed those comments above. In this respect, the Bureau's section 1022(b)(2) discussion is not limited to the discussion in this part of the final rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau has applied its knowledge and expertise concerning consumer financial markets and information received in response to its request for comment. Compared to the baseline established by the Prepaid Accounts Final Rule,<sup>18</sup> the delay of the effective date of the Prepaid Accounts Final Rule will generally benefit covered persons by facilitating initial compliance with the Prepaid Accounts Final Rule's requirements and delaying the start of ongoing compliance costs. Because covered persons retain the option of complying with the Prepaid Accounts Final Rule's original effective date, any delay in the effective date will not increase costs to providers.

Consumers may experience both benefits and costs from a delay in the effective date. If a delay in the effective date helps to preserve consumer access to covered products by minimizing industry disruption, both consumers and covered persons will benefit. However, the Bureau believes that delaying the effective date may also delay consumers' realization of benefits arising from the protections provided by the Prepaid Accounts Final Rule, thereby potentially imposing a cost on consumers. One think tank commenter stated that, although prepaid providers often offer some protections voluntarily, providers may alter or remove protections so long as the rule is not in effect. Another think tank commenter stated that the primary cost of the delay would be that consumers would not have the information needed to make appropriate choices among card products. However, the commenter also stated that providers have made improvements with respect to disclosure recently and that it believed that

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<sup>18</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

the risk of consumers not having adequate information for decision-making during the intervening period was low.

The Bureau does not expect the final rule to have a differential impact on depository institutions and credit unions with \$10 billion or less in total assets, as described in section 1026 of the Dodd-Frank Act, or on consumers in rural areas. The Bureau does not believe that the delay in the effective date will reduce consumer access to consumer financial products and services, and it may increase consumer access by decreasing the possibility of industry disruption arising from the Prepaid Accounts Final Rule’s implementation.

### **VIII. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act<sup>19</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996<sup>20</sup> (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.<sup>21</sup> The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.<sup>22</sup>

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-

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<sup>19</sup> Public Law 96-354, 94 Stat. 1164 (1980).

<sup>20</sup> Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

<sup>21</sup> 5 U.S.C. 601 through 612. The term “‘small organization’ means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].” 5 U.S.C. 601(4). The term “‘small governmental jurisdiction’ means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].” 5 U.S.C. 601(5).

<sup>22</sup> 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.<sup>23</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.<sup>24</sup>

The undersigned certified that the Effective Date NPRM would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Bureau arrived at this conclusion because the Effective Date NPRM would delay the effective date of the Prepaid Accounts Final Rule, which itself would not have a significant economic impact on a substantial number of small entities.<sup>25</sup> Upon considering relevant comments, the Bureau's conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.<sup>26</sup>

As discussed above, this final rule delays the effective date of the Prepaid Accounts Final Rule to April 1, 2018. The six-month delay in the effective date will benefit small entities by providing additional flexibility with respect to the timing of the Prepaid Accounts Final Rule's implementation. In addition to generally providing increased flexibility, the delay in the effective date will permit small entities to delay the commencement of any ongoing costs that result from complying with the Prepaid Accounts Final Rule. Because small entities retain the option of complying with the Prepaid Accounts Final Rule's original effective date, the final

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<sup>23</sup> 5 U.S.C. 601 through 612.

<sup>24</sup> 5 U.S.C. 609.

<sup>25</sup> 81 FR 83934, 84308 (Nov. 22, 2016).

<sup>26</sup> 5 U.S.C. 605(b).

rule's delay of the effective date will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Final Rule.

Accordingly, the undersigned hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

## **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>27</sup> Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Final Rule have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170-0014 (Regulation E) and 3170-0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this final rule will not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

### **List of Subjects**

*12 CFR part 1005*

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings Associations.

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<sup>27</sup> 44 U.S.C. 3501 *et seq.*

## **Authority and Issuance**

For the reasons set forth above, Regulation E, 12 CFR part 1005, as amended November 22, 2016, at 81 FR 83934, is further amended as follows:

### **PART 1005 – ELECTRONIC FUND TRANSFERS (REGULATION E)**

1. The authority citation for part 1005 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o-1.

#### **Subpart A—General**

##### **§ 1005.18 Requirements for financial institutions offering prepaid accounts.**

2. Section 1005.18 is amended by revising all references to “October 1, 2017” to read “April 1, 2018” in paragraphs (b)(2)(ix)(D)(1) through (3) and (h).

##### **§ 1005.19 Internet posting of prepaid account agreements.**

3. Section 1005.19 is amended by revising the reference to “October 1, 2017” to read “April 1, 2018” in paragraph (f)(1).

4. In Supplement I to part 1005:

a. Under *Section 1005.18—Requirements for Financial Institutions Offering Prepaid*

*Accounts:*

i. In subsection *18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of October 1, 2017*, the subsection heading and paragraph 1 are amended by revising all references to “October 1, 2017” to read “April 1, 2018”.

ii. In subsection *18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of October 1, 2017 with Unavailable Data*, the subsection heading and paragraph 1 are amended by revising all references to “October 1, 2017” to read “April 1, 2018”.

iii. In subsection *18(b)(2)(ix)(E)(2) Periodic Reassessment*, paragraphs 1.i through iii are amended by:

A. Revising all references to “October 1, 2017” to read “April 1, 2018”.

B. Revising all references to “October 1, 2019” to read “April 1, 2020”.

C. Revising the reference to “January 1, 2020” to read “July 1, 2020”.

iv. In subsection *18(b)(2)(ix)(E)(3) Fee Schedule Change*, paragraph 1 is amended by revising the reference to “October 1, 2017” to read “April 1, 2018”.

v. In subsection *18(h) Effective Date and Special Transition Rules for Disclosure Provisions*, paragraphs 1 and 2 are amended by revising all references to “October 1, 2017” to read “April 1, 2018”.

vi. In subsection *18(h) Effective Date and Special Transition Rules for Disclosure Provisions*, paragraph 6 introductory text and paragraph 6.i are amended by:

A. Revising all references to “October 1, 2017” to read “April 1, 2018”.

B. Revising the reference to “November 1, 2017” to read “May 1, 2018”.

C. Revising the reference to “October 1, 2018” to read “April 1, 2019”.

D. Revising the reference to “October 1, 2019” to read “April 1, 2020”.

vii. In subsection *18(h) Effective Date and Special Transition Rules for Disclosure Provisions*, paragraph 6.ii is revised to read as follows:

**Supplement I to Part 1005—Official Interpretations**

\* \* \* \* \*

*Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts*

\* \* \* \* \*

*18(h) Effective Date and Special Transition Rules for Disclosure Provisions*

\* \* \* \* \*

*6. Account information not available on April 1, 2018. \* \* \**

ii. *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5) beginning April 1, 2018. If, on April 1, 2018, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on May 1, 2018 for the month of April, and the year-to-date fee total beginning on April 1, 2018, provided the financial institution discloses that it is displaying the year-to-date total beginning on April 1, 2018 rather than for the entire calendar year 2018. On January 1, 2019, financial institutions must begin displaying year-to-date fee totals for calendar year 2019.

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[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED “PREPAID  
ACCOUNTS UNDER THE ELECTRONIC FUND TRANSFER ACT (REGULATION E)  
AND THE TRUTH IN LENDING ACT (REGULATION Z); DELAY OF EFFECTIVE  
DATE”]

Dated: April 19, 2017.



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**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*