



Eye On Washington

Regulatory Update



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New Consumer Financial Protection Bureau Prepaid Accounts Rule Affects Payroll Cards

On October 5, 2016, the Consumer Financial Protection Bureau (CFPB) recently issued its final Prepaid Accounts Rule, which amends Regulations E and Z to provide broader protections for certain prepaid accounts, including employer-provided payroll cards. Regulation E generally addresses consumer-protection rights and requirements related to electronic fund transfers, and Regulation Z establishes consumer protections for credit arrangements.

Some provisions of the Prepaid Accounts Rule include increased disclosure requirements, limited consumer liability for lost or stolen cards, expanded access to card account information, and other consumer credit protections.

Under the Prepaid Accounts Rule, payroll cards are subject to various disclosure requirements, including any applicable fees associated with the payroll cards. One of the disclosure requirements is a statement that the consumer does not have to accept the payroll card account and directs the consumer to ask his or her employer about other ways to receive wages.

The majority of these provisions go into effect on October 1, 2017. A more detailed explanation of the Prepaid Rule is below.

Disclosure Requirements

The Prepaid Rule requires several sets of disclosures, the first of which must be supplied to employees before they have agreed to be paid by means of a payroll card. They include both a short- and a long-form disclosure. These pre-acquisition disclosures may be provided electronically for payroll accounts acquired online or via a mobile phone. Compliance with the E-Sign Act is not required in those particular instances. Compliance with the E-Sign Act is required for all other written disclosures required by the Prepaid Rule, including pre-acquisition disclosures if the payroll card is acquired by means other than online or via a mobile phone.

The short form, pre-acquisition disclosure must include the following information:

- A notification that the employee cannot be required to accept a payroll card account, or a statement that the employee has the option of several methods to receive payment, and that he or she should direct the employer which he or she prefers;
- Disclosure of “static” and other fees, such as periodic fees, per purchase fees, ATM withdrawal fees, cash reload fees, balance inquiry fees, customer service fees and inactivity fees — even if such fees are zero, or not a feature of that particular card; and
- Statements regarding linked overdraft credit features, registration and FDIC/NCUA insurance, the URL for the CFPB’s website, and information on where the employee can find the long-form disclosure.



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In “close proximity” to the time of providing the short-form disclosure, the employee also must be advised of the issuing financial institution’s name, the name of the payroll card program, any purchase price for the card, and any activation fees.

The long-form, pre-acquisition disclosure must contain the following information:

- A title, including the name of the prepaid account program;
- Information about **all** fees that may be imposed in connection with the payroll card 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 contact information for the issuing institution;
- A statement directing the employee to www.cfpb.gov/prepaid for general information about prepaid accounts; and
- A statement directing the employee to www.cfpb.gov/complaint and to the CFPB’s telephone number to submit a complaint related to prepaid accounts.

Additional disclosures must be provided either on the access device itself, (i.e., the card) or, if there is no physical access device, then on the entry point the employee uses to access the payroll card account, such as a website or mobile application.

The Prepaid Account Rule requires card issuers to continue to provide employees with initial disclosures (separate and in addition to the pre-acquisition disclosures), and expands the circumstances under which notice of changes in terms must be provided. 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. The Prepaid Rule does not require that payroll cards issued prior to its effective date be revoked or replaced, but in certain circumstances, employees must be provided with initial disclosures updated as a result of the Prepaid Rule taking effect.

Required Account Information

The Prepaid Account Rule expands the time period that must be reflected in account histories offered as alternatives to traditional periodic statements. If such account transaction histories are electronic, they must cover at least the 12 months prior to the date on which the employee electronically accesses the account. If written, such account transaction histories must cover at least the 24 months prior to the date of the request.

In addition, periodic statements and account histories must display any fees assessed against the account. They also must show a summary total of all fees assessed against the account for the prior calendar month and for the calendar year to date. If enough data to meet the requirements does not yet exist (e.g., because the account is newly acquired), the display may reflect only the data available.

Required Investigations and Protection From Fraud

Card issuers (e.g., the financial institution that issued a payroll card) must cooperate with employees who report unauthorized or suspicious charges, and promptly



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investigate these situations. Where appropriate, issuers (not employers), must reimburse employees for improperly charged amounts. If an investigation cannot be completed in a reasonable time, an issuer will be required to issue a provisional credit for the amount under investigation. If an employee promptly reports a card as lost or stolen, the employee cannot be liable for unauthorized charges of more than \$50.

New Rules for Payroll Cards With Credit Features

For cards that allow advances or overdrafts, or have other features offering credit separate from the prepaid payroll account, the Prepaid Account Rule provides that many requirements applicable to credit cards under Regulation Z will apply. Payroll cards that do not permit transactions to proceed where the employee has an insufficient balance, do not charge fees if the account has a negative balance, and do not include separate credit features are exempt from the application of Regulation Z.

Approval of Account Agreements by CFPB and Availability to the Public

Beginning October 1, 2018, issuers of payroll cards will be required to submit new or amended account agreements to the CFPB, as well as notification of withdrawn agreements, within 30 days. Account agreements must be made available to employees either on the issuer's website or in writing within five business days of the request.

While the Prepaid Rule applies at the federal level, some state and local jurisdictions, such as the State of New York, have different or more restrictive rules related to the use of payroll cards, which will continue to apply.

Click on the link below for the CFPB's final rule:

http://files.consumerfinance.gov/f/documents/20161005_cfpb_Final_Rule_Prepaid_Accounts.pdf

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