

The New Prepaid Rule is Here. What Now?

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Presented by: Alex Dugan and Riley Key

Bradley

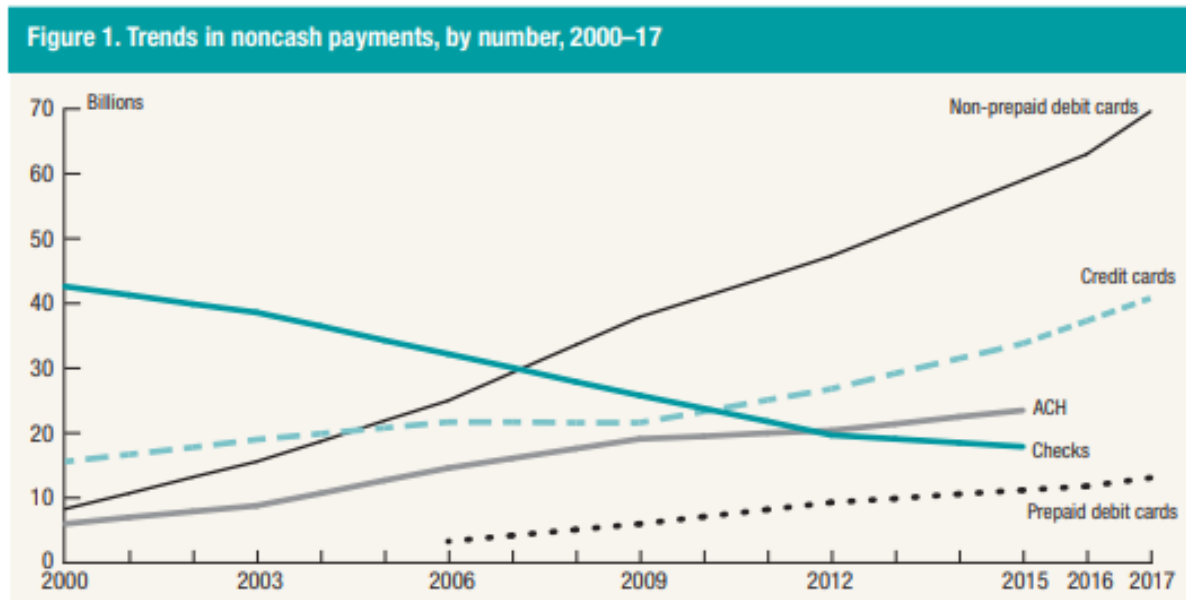
Agenda

- The Prepaid Industry
- The Prepaid Rule – The Basics
- Prepaid Exams
- What's Next?

The Prepaid Industry

The Growth of the Prepaid Industry

- Prepaid cards are a rapidly growing market that according to the FDIC was used by 9.8 percent of households in 2015
- ***“Among the card types, general-purpose prepaid debit card payments exhibited the strongest growth rate by number from 2016 to 2017, 18.9 percent.”***



Source: Federal Reserve, Payments Study

The Growth of the Prepaid Industry

- Growth in the prepaid card industry is expected to continue in the upcoming years

FORECAST: US Prepaid Card Transaction Volume

Billions



Source: <https://www.businessinsider.com/prepaid-card-report-2018-6>

Growth of Prepaid Industry

Who are the Consumers?

- Use of prepaid products provided by third party to consumer
 - Payroll cards
 - Gov't benefits
 - Student loan disbursements
- Select prepaid despite flexibility or options to use other products (*i.e.* checking account, credit card)
 - Millennials
 - P2P transfers (*i.e.* Venmo, Paypal)
- Where use is compulsory or may appear compulsory, CFPB concern about consumer protection

Why Prepaid?

- Ability to manage finances and budget
- Lack of credit or poor credit history
- Avoid credit card debt, overdraft fees, etc.
- Used to complement other financial products
- Widely accepted

The Prepaid Rule

The Basics

Overview

Background

- The Prepaid Rule became effective on April 1, 2019

Purpose

- Protect consumers by prohibiting various unfair, misleading and deceptive practices in the prepaid market

Effect

- Amends and clarifies portions of TILA (Reg. Z) and the EFTA (Reg. E)

Who is Subject to the Prepaid Rule?

Who is Subject to the Prepaid Rule?

Financial Institution

- Any bank, credit union, savings association or any other person that either:
 - Directly or indirectly holds an account (including a prepaid account) belonging to a consumer; or
 - Issues an access device and agrees with a consumer to provide electronic funds transfer services

Issuer

- Entity to which a consumer is legally obligated or would be legally obligated under terms of a prepaid account agreement

Example

- Bank A & B work together to issue prepaid accounts
- Consumer obtains prepaid card through link on Bank B's site
- Agreement provides that it is between consumer, Bank A & B and card has Bank B's logo on it
- Issuer is Bank A because agreement creates legally enforceable obligation between Consumer and Bank A

What is a “Prepaid Account”?

What is a “Prepaid Account”?

(1) Payroll Card Account

(2) Government Benefits Accounts

(3) Account marketed or labeled as “prepaid”

(4) Account whose primary function is to perform certain transactions

What is a Prepaid Account?

(3) Account marketed or labeled as “prepaid”

- Must satisfy both conditions:
 - **Marketed or labeled as prepaid**
 - “Prepaid” appears on the card, packaging materials, or on a display, advertisement, or other publication used to promote the account
 - **Used at multiple, unaffiliated merchants for goods/services or usable at ATMs**
 - Merchants are affiliated if they:
 - Are related by common ownership
 - Share the same name, mark or logo
 - Agree, by contract or otherwise, to redeem cards, codes or devices bearing the same mark, logo or brand for use solely at such merchants

What is a Prepaid Account?

(4) Account whose primary function is to perform certain transactions

- Must satisfy **all** conditions:
 - Is either (a) issued on a prepaid basis in a specified amount; or (b) capable of being loaded with funds after issuance;
 - Primary function of (a) conducting transactions with multiple, unaffiliated merchants for goods or services; (b) conducting transactions at ATMs; or (c) conducting person-to-person (P2P) transfers; **AND**
 - NOT checking account, share draft account or negotiable order of withdrawal account (NOW)

What is a Prepaid Account?

Prepaid Rule includes 8 exclusions which apply to 3rd and 4th categories of definition:

- Loaded only with funds from certain healthcare and employee benefit programs (*i.e.* HSA, FSA)
- Loaded only with qualified disaster relief payments
- Gift certificate
- Store gift card
- Loyalty, award or promotional gift card
- Prepaid card marketed and labeled as a gift card
- An account established for distributing needs-tested benefits
- The P2P functionality of an account for closed-loop transactions on U.S. military installations or vessels or similar government facilities

Disclosure Requirements

Pre-Acquisition Disclosures

General Requirements

- Modified Reg E's general rule about how disclosures are provided
 - If consumer acquires account through electronic means, must provide these disclosures electronically (unless provided in writing before acquiring account)
- Addresses requirements for providing written and electronic disclosures separately

Timing

- Generally, must provide these disclosures before consumer acquires account
- Timing may vary based on whether the disclosures are provided electronically or consumer acquires prepaid account orally by telephone

Pre-Acquisition Disclosures

Short Form Disclosure

- Certain fees must be disclosed
- Specific requirements about how the fees are disclosed and additional fee types
- Specific form and formatting requirements
 - CFPB's Model Forms A-10(a) through A-10(e)

Additional Information outside but in close proximity to short form disclosure

- Financial institution's name;
- Name of prepaid account program;
- Purchase price; and
- Activation fee

Pre-Acquisition Disclosures

Long Form Disclosure

- “Companion” to short form disclosure
- Provides more comprehensive fee information including all fees that may be imposed and detailed information on conditions fee may be imposed, waived, or reduced
- Sample long form disclosure available as Sample Form A-10(f)

Initial Disclosures

Initial Disclosure Rules

- Generally must include:
 - Liability of consumers for unauthorized EFTs
 - Telephone number/address
 - Business days
 - Types of EFTs, as well as limits on frequency/dollar amount of EFTs
 - Fees and other information required to be in long form disclosure
 - Summary of right to certain documents including periodic statements and notices for preauthorized EFTs
 - Summary of right to stop payment
 - Liability of institution for failure to make or stop certain EFTs
 - Circumstances financial institution will provide information about account to third parties
 - Error resolution substantially similar to Model Form A-3
 - ATM fees

Change in Terms Notices

Must be
Mailed/
Delivered to
Consumer if

- Term/condition required to be disclosed in initial disclosures (including information required in long form disclosure) changes **and**
- Change results in any of the following:
 - Increased fees for consumer
 - Increased liability for consumer
 - Fewer types of available EFTs
 - Stricter limitations on frequency or dollar amounts of EFTs

Timing

- At least 21 days prior to effective date of change

How to
provide

- Periodic statement
- Copy of revised disclosure statement if “directs consumer’s attention to change(s)”

Periodic Statements

Statements Must Include

- Specific information about each EFT transactions
- Account number
- Amount of any fee assessed
- Balance at beginning and end of period
- Address and number for inquiries or notices of error
- Telephone number to verify preauthorized EFT occurred
- Total of all fees assessed for prior month and year to date

Alternatives

- Account balance information
- Electronic transaction histories (12 months)
- Written transaction histories in response to requests (24 months)

Limits on Liability & Error Resolution

Limits on Liability

Limits on Liability Rules

- Can only hold consumer liable for unauthorized EFTs if these written disclosures have been provided:
 - Summary of liability for EFTs
 - Telephone number and address for reporting unauthorized EFTs; and
 - Financial institution's business days
- If unauthorized use involves an access device (e.g. card), both of these conditions must also be met:
 - Must be an accepted access device
 - Means to identify the consumer to whom the access device was issued (e.g. PIN, comparison of signature, fingerprint)

Error Resolution

Requirements

- Financial institutions are required to investigate and respond to notices of error
 - Promptly investigate oral or written notice of error;
 - Within required timeframe, complete its investigation and determine whether error occurred;
 - Correct error if any, within one business day after determining error occurred; and
 - Report results of investigation to consumer within 3 business days after completing investigation

Error Notice

- Must mail or deliver, at least once each calendar year, an error notice
 - CFPB has provided model forms

Error Resolution & Limits on Liability

Unverified Prepaid Account Rules

- Unverified prepaid accounts are not subject to the limited liability and error resolution provisions provided
- Satisfied when:
 - Process has not concluded;
 - Process concluded but could not verify identity of customer; or
 - No identification and verification process and
 - Provides alternative initial disclosure
 - Complies with disclosed error resolution process and liability limits (if any)

Overdraft Credit Features

Overdraft Credit Features

Credit Feature

Credit extended either

- As a separate account or subaccount; or
- Negative balance on the asset feature

Hybrid Prepaid Credit Card

- Must be structured as separate credit feature
- May not allow asset feature to become negative; must transfer funds from separate credit feature

Restrictions on Negative Balances

- 3 permitted scenarios: (1) policy against negative transactions but “force-pay” causes it; (2) transaction won’t take negative balance below \$10; (3) transaction conducted while pending deposits are sufficient to cover
- Cannot charge credit-related fees on asset feature
- No separate credit feature offered by issuer or affiliate

Submission of Agreements

Submission of Agreements

Rules on submitting prepaid account agreements

- Issuers must make submissions of prepaid account agreement to CFPB on a rolling basis
 - Must also post agreements offered to the general public on its publicly available website
- Must submit within 30 days of triggering event
- **Triggering Events**
 - Offers new prepaid account agreement
 - Amends an existing agreement
 - Applies to “substantive changes”, *i.e.* alters rights/obligations of issuer or consumer
 - Ceases to offer agreement

Submission of Agreements

Rules on submitting prepaid account agreements

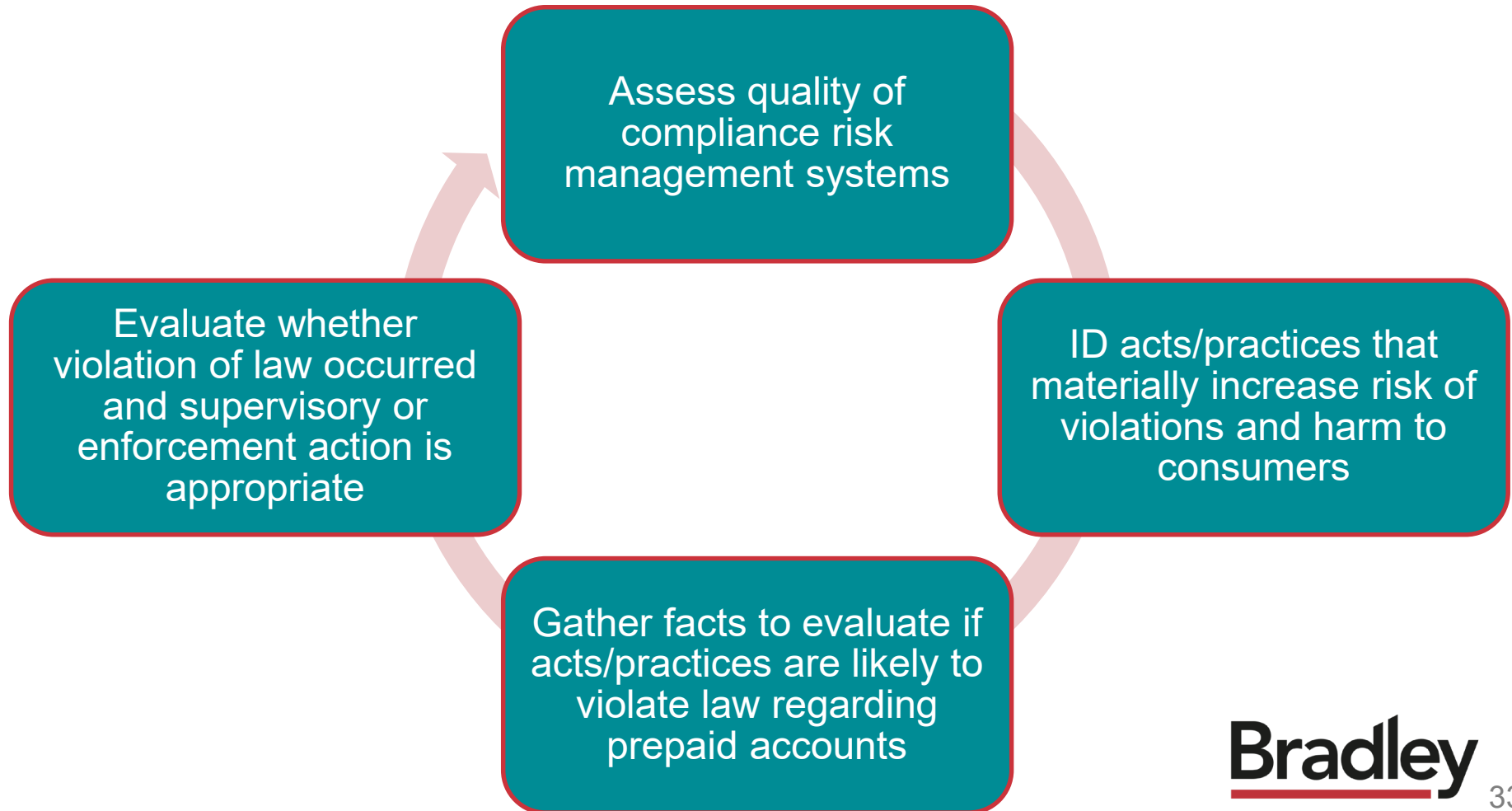
- Exceptions to Submission Requirement
 - **De minimis** – issuer has fewer than 3,000 open prepaid accounts
 - **Product testing** – offered as part of a product test to only a limited group of consumers

Agreements offered as of 4/1/2019 must be uploaded to the portal by 5/1/2019

Prepaid Exams

Exam Objectives

- The CFPB's exam objectives for evaluating compliance and harm associated with prepaid cards are:



CFPB Examination Modules

Pre-Acquisition
Disclosures

Initial Disclosures

Periodic Statements
& Alternatives

Error Resolution &
Limits on Liability

Receipts at electronic
terminals, preauthorized
EFTs & access devices

Compulsory use,
submission of
agreements & record
retention

Overdraft credit
features

UDAAP

What's Next?

Compliance Challenges

- Ensure there is a clear and constant flow of communication between all stakeholders involved in existing prepaid program or new product offerings
 - Customer facing units
 - Marketing
 - Product development
 - Compliance
 - In-house counsel

- Ongoing evaluation and tracking of data and processes that are key elements of obligations and requirements under Prepaid Rule

Practical Tips

- Set up “lunch and learn” with stakeholders to educate them about Prepaid Rule and forecast compliance challenges
- Watch your compliance audits and complaints
- Update policies, procedures and/or checklists to “catch” substantive changes to prepaid accounts
- Your May 1 submission deadline is coming!

Questions?



Alex Dugan
adugan@bradley.com
615.252.4638



Riley Key
rkey@bradley.com
205.521.8247