

The CFPB's Prepaid Proposal Reg E, Reg Z, and Overdrafts

A Presentation to the Financial Services Roundtable,
Consumer Working Group

By Andrew J. Lorentz

February 19, 2015

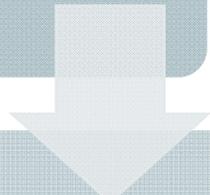


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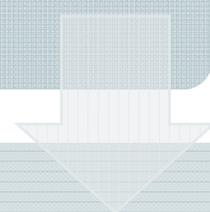


Overview of Today's Discussion

Highlights of the prepaid proposal

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Regulation Z and Prepaid Accounts

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Implications for deposit account overdrafts

Introduction

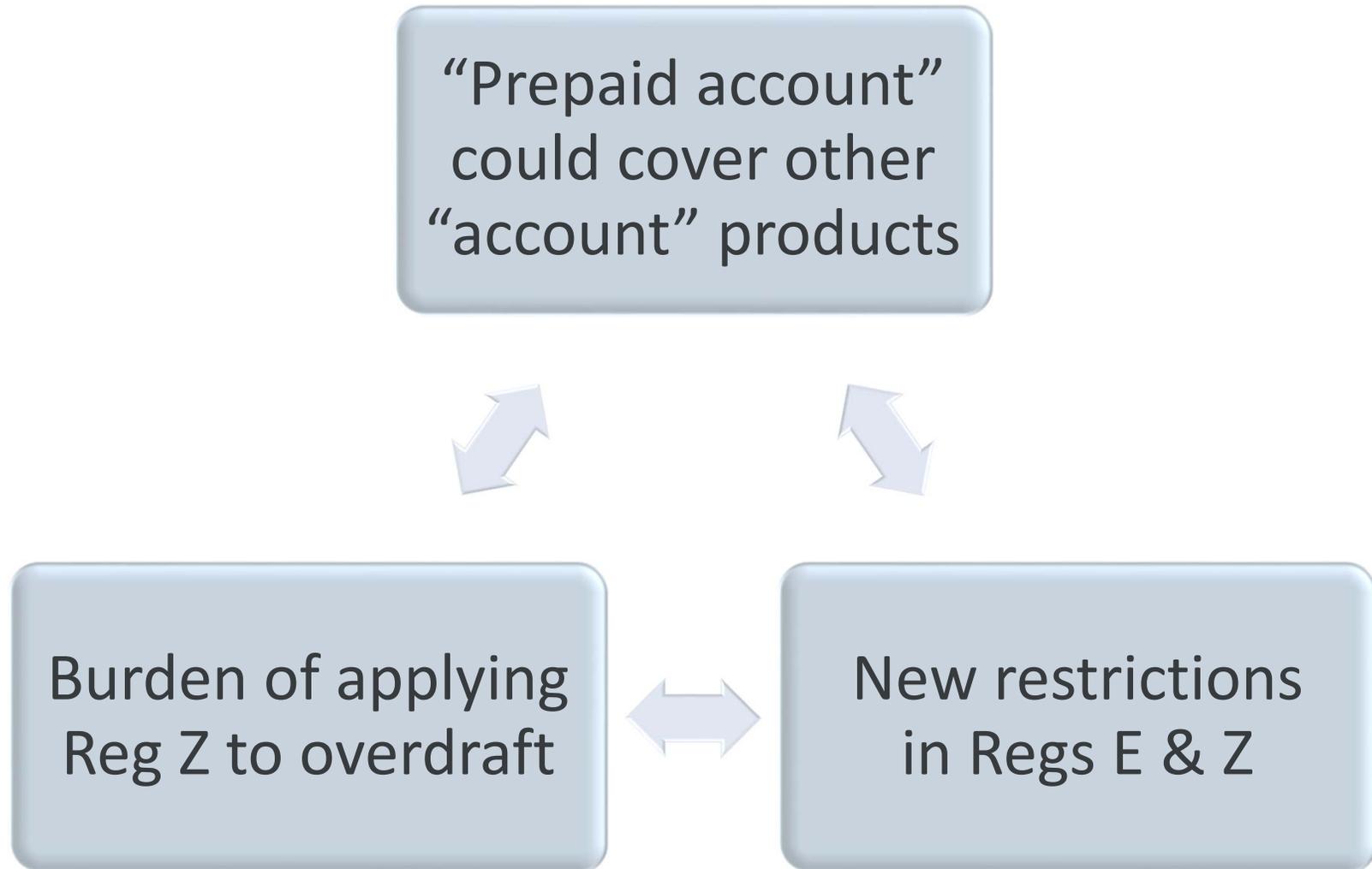
Amends:

- Regulation E (Electronic Fund Transfer Act)
- Regulation Z (Truth in Lending Act)

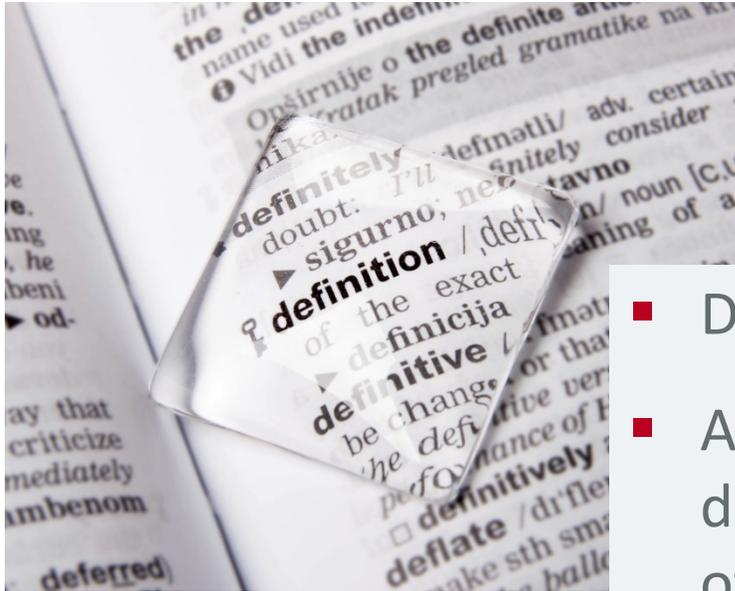
Published in the Federal Register December 23, 2014

- Comment period ends March 23, 2015
- CFPB indicates extension is unlikely

Three-Dimensional Challenge



What is a “Prepaid Account”?



- Defined in Reg E
- A type of “account”, which “means a demand deposit (checking), savings, or other consumer asset account... held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.”

What is a “Prepaid Account”?

“Prepaid account” is defined as “a card, code, or other device, not otherwise an account ..., which...

Incorporates certain existing accounts for payroll and government benefits

(A) is either issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter;

(B) is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers; AND

(C) is not (1) a gift certificate... (2) a store gift card... (3) a loyalty, award, or promotional gift card.... or (4) a general-use prepaid card.



What isn't a Prepaid Account?

- Application of prepaid provisions to other types of “accounts” under Reg E
- So what?
 - Major impact – proposal radically alters regulation of overdrafts
 - CFPB explicitly states that it “is not proposing to change how overdraft services on accounts other than prepaid accounts are treated under Regulation Z.”
 - At least in *this* rulemaking.

HIGHLIGHTS OF THE

PREPAID PROPOSAL

Highlights of the Prepaid Proposal

- Defines a “prepaid account” to extend “Reg E Lite” protections
- Disclosures – short form and long form
 - Short form includes:
 - Static fee disclosures
 - Variable disclosures – the top-three incidence based fees for the prior year
 - Reference to long form disclosures available post-acquisition, e.g. inside a package or online



Model Form for Short Form Disclosures for Prepaid Accounts With Overdraft and Other Credit Features

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$4.95*	\$0 with sig. \$0 with PIN	\$0 in-network \$2.00 out-of-network	\$2.00*

This card may charge credit-related fees.

ATM balance inquiry (in-network or out-of-network)	\$0 or \$1.00
Customer service	\$1.50 per call
Inactivity (no transactions for 3 months)	\$4.50 per month
[Incidence-based fee]	\$2.95
[Incidence-based fee]	\$3.95
[Incidence-based fee]	\$1.00

*Fees can be lower depending on how and where this card is used.

We charge 6 other fees not listed here.

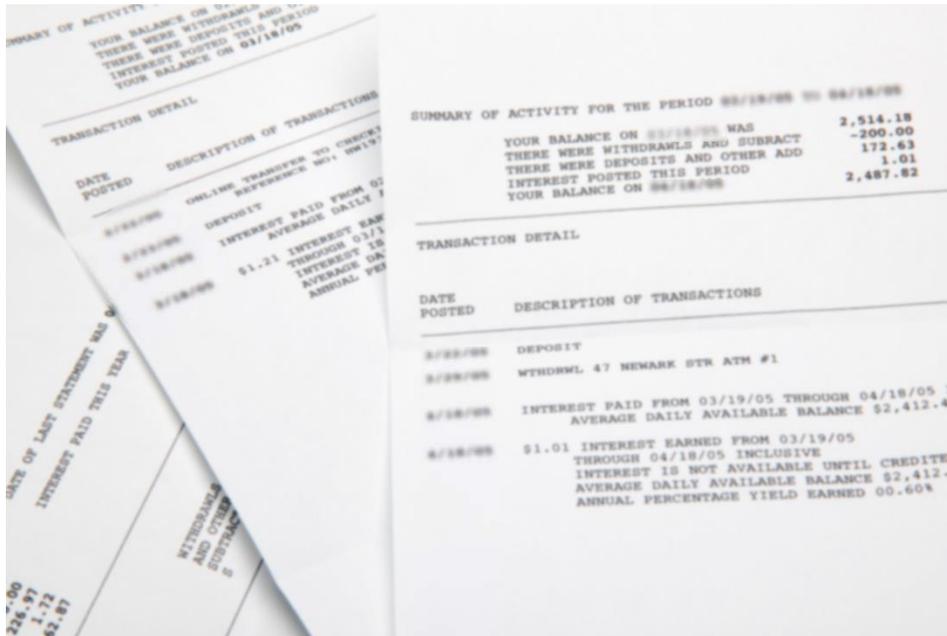
Find details and conditions for all fees and services inside the package or call **800-234-5678** or visit bit.ly/XYZprepaids.

Register your card with XYZ Prepaid Company to protect your money.

This card does not provide [FDIC][NCUSIF] insurance.

For more information about prepaid cards, visit cfpb.gov/prepaids.

Highlights of the Prepaid Proposal



- Periodic statements required
 - Though alternative delivery permitted where 18 months of online transaction history is available
 - [Increased from 60 days in current payroll rule]

Highlights of the Prepaid Proposal

- Must submit prepaid account agreements to CFPB and post on issuers' websites
- Reg E error resolution requirements and consumer liability limitations would apply, but only to *registered accounts*
 - Timing issues – if a consumer calls to register and provide notice of an error at the same time, error resolution terms will apply (and reach back for a period)





REGULATION Z & PREPAID ACCOUNTS

Regulation Z & Prepaid Accounts

Two
issues:

- 1) Revisions to Reg Z
- 2) Application of Reg Z's existing credit card provisions to prepaid cards that access credit

Revisions to Reg Z

The sea change – treating prepaid overdrafts as credit

Includes unintentional overdrafts – e.g. force-pay transactions when there are sufficient or available funds at the time of authorization but insufficient funds when the transaction is paid

Major change from the current treatment of overdrafts – which are not treated as credit since funds are made available in the bank’s discretion

Reg Z specifically excludes overdraft charges from the “finance charge” definition.

The proposal reverses course but only with respect to prepaid accounts.

CFPB staff have indicated flexibility on “force-pay” transactions

Revisions to Reg Z

- Proposed definition of “finance charge” – covers prepaid overdraft & participation fees, among other things
 - Fee on a prepaid account for an extension of credit, carrying a credit balance, or for credit availability in connection with credit accessed by a prepaid card or accessed by an “account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor”
 - Existing exclusion from the finance charge for overdraft fees and participation fees – amended to except prepaid cards

Revisions to Reg Z

- Commentary would define a credit card to include prepaid cards that access a credit plan from time to time, unless there are practically no fees.
 - A prepaid card that occasionally accesses credit will be considered a credit card if:
 - There are any finance charges incurred, including overdraft charges and participation fees (e.g. monthly or annual fees); or
 - If there is a written agreement requiring repayment in more than four installments.

Revisions to Reg Z



- Other revisions to Reg Z specific to prepaid accounts
 - Application and solicitation disclosures –requires a 30-day cooling off period after registration before credit may be offered to a prepaid account holder

Application of Reg Z to Prepaid Cards that Access Credit: Compliance Challenges

Prepaid cards that are considered credit cards are subject to Reg Z's full scope of regulations

25% cap on first year's fees – defining the credit limit; identifying fees to include; incidence based fees vs. APRs

Ability to pay – underwriting required at account opening and when increasing credit lines

- Prescribed limits on late fees, over limit fees, timing and notice requirements for fee increases;
- Prohibition of certain fees, e.g. inactivity fees, etc.
- Grace period requirements – can't impose a late fee if payment is received within 21 days of sending a statement;
 - How does this fit with prepaid rule's offset prohibition, which provides that outstanding balances can't be offset by deposits and issuer may only schedule a single debit per month? How will credit be repaid?

Periodic statement rules

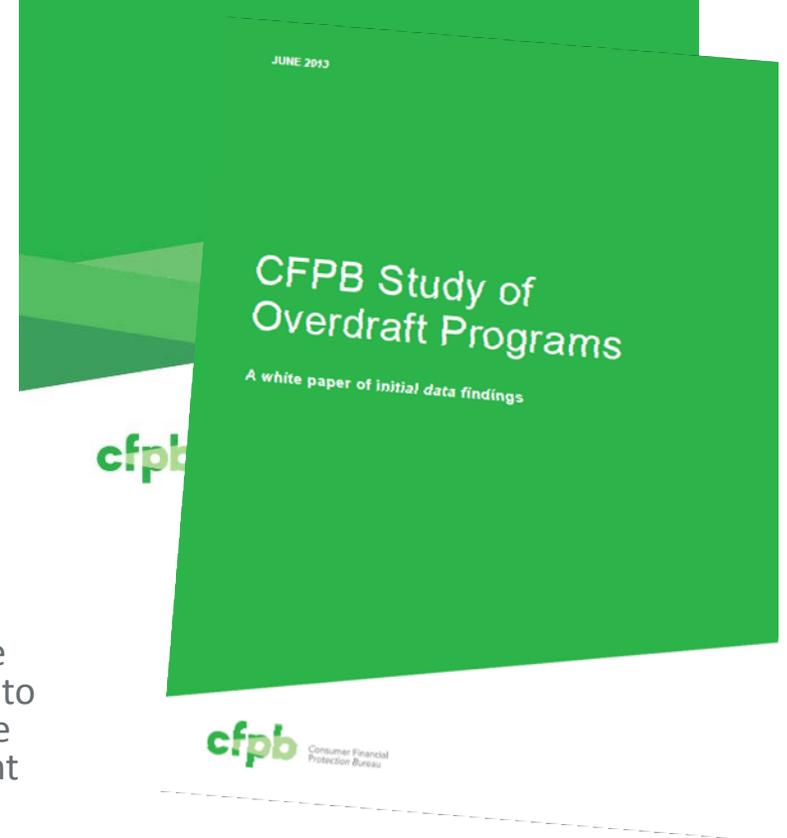


IMPLICATIONS FOR DEPOSIT ACCOUNT OVERDRAFTS (?)

Overdraft Regulation

- Does the CFPB's treatment of prepaid overdrafts foreshadow its approach to overdraft rules?
 - CFPB has been focused on overdraft issues
 - February 2012 –notice and request for information regarding the impacts of overdraft programs on consumers
 - April 2013 – white paper on payday loans and deposit advance products
 - June 2013 and July 2014 reports on usage of deposit overdrafts
 - CFPB converts incidence-based fees to APRs
 - CFPB states that the median overdraft fee at the banks studied was \$34, and if a consumer were to borrow \$24 for three days and pay a \$34 finance charge, such a loan would carry a 17,000 percent APR.

Data Point:
Checking account overdraft



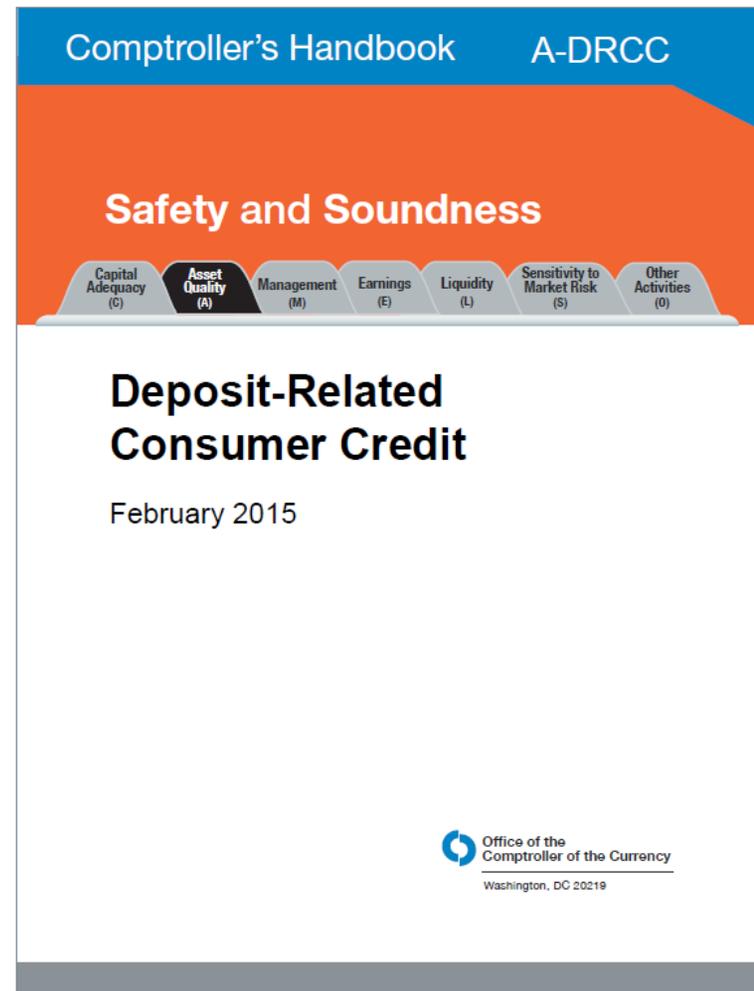
Overdraft Regulation

- CFPB’s rulemaking agenda
 - Overdraft is in the “prerule” stage
 - More prerule activities (another RFI or data report, perhaps an ANPR) are on the docket for July 2015.



New OCC Guidance on Deposit-Related Consumer Credit

- Comptroller’s Handbook on Deposit-Related Consumer Credit (February 2015) also treats deposit account overdrafts as credit
 - Largely treats check credit (overdraft line of credit, cash reserves, special drafts), overdraft protection and deposit advance products similarly
 - Imposes numerous requirements on all deposit related consumer credit products, including ability to repay assessments



Thank you!



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