

Practice Update

CFPB Excludes Pandemic Relief Payments from Regulation E's Compulsory Use Prohibition

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On [April 13](#), the Consumer Financial Protection Bureau (CFPB) issued an interpretive rule regarding the application of Regulation E and the Electronic Fund Transfer Act (EFTA)'s compulsory use prohibition to CARES Act and similar COVID-19-relief payments made by governments. In its interpretive rule, the CFPB determined these stimulus payments do not constitute “government benefits” subject to Regulation E’s prohibition on compulsory use. The CFPB did this to help governments provide consumers with much needed financial support as quickly and efficiently as possible during the crisis. This interpretive rule is effective on the date of publication in the Federal Register.

Certain government benefit accounts have been subject to Regulation E since the 1990s. [12 C.F.R. 1005.15\(a\)](#) (excluding accounts used to disburse needs-tested benefits). In 2016, the CFPB expanded the definition of “account” in Regulation E to include prepaid accounts and established a broad set of rules applicable to prepaid accounts. [81 FR 83934 \(Nov. 22, 2016\)](#). That rulemaking applied prepaid-specific provisions to government benefit accounts that are also prepaid accounts. The CFPB notes in the interpretive rule that prepaid accounts can be used by government agencies to distribute needed funds

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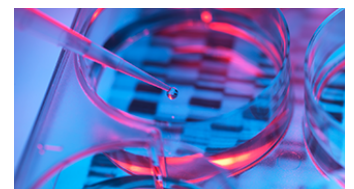
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to consumers who do not have bank accounts to which they can receive direct deposits or when the agency does not have the consumer's direct deposit account and routing number information to initiate an ACH payment. In such cases, the government agency may find it easier to disburse the payment via a prepaid card loaded with funds.

Absent action by the Bureau, government agencies may interpret the compulsory use prohibition to not allow them to send consumers prepaid accounts loaded with stimulus payments. EFTA's compulsory use prohibition forbids government agencies from requiring consumers to establish accounts with a particular financial institution to receive a government benefit. 15 U.S.C. § 1693k; 12 C.F.R. § 1005.10(e)(2). This would apply to an agency that mandates a consumer receive a payment via a particular prepaid account. The commentary to the compulsory use prohibition explains governments must give consumers a choice of how to receive funds although that they can mandate electronic payments. Cmt. 10(e)(2)-2. (The compulsory use prohibition also applies to wage payments and prohibits employers from mandating use of a particular payroll card. *See CFPB Bulletin 2013-10*.) The CFPB has previously explained that the compulsory use prohibition does not prohibit a government agency from having a default payment method for consumers who do not elect a payment method, and that default method can be a prepaid account. 81 FR at 83985.

The CFPB explains in its interpretive rule that it is concerned that application of the compulsory use prohibition to stimulus payments could slow consumers' receipt of needed funds. The CFPB explains that "the disbursement of funds via alternative means, such as a newly-issued prepaid account, may be faster, more secure, more convenient, and less expensive—for both the government agency and the consumer—than making disbursements through other methods such as paper check." Absent the interpretive rule,

disbursements could be limited to time-consuming and less reliable methods such as printing and mailing paper checks.

The CFPB expects its interpretive rule will address these concerns. Under the rule, the compulsory use prohibition does not apply to payments from federal, state, or local governments which:

- (1) are made in response to the COVID-19 pandemic;
- (2) are not part of an existing government benefit program;
- (3) are made on a one-time or otherwise limited bases; and
- (4) do not require a consumer application to receive funds.

This rule should allow government agencies to disburse funds through prepaid accounts, which include closed-loop and open-loop prepaid products such as reloadable cards, without requiring them to provide consumers a choice of how to receive the funds. The CFPB anticipates this will provide consumers with a convenient alternative for government agencies unable to provide payments via direct deposit.

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