

Practice Update

CFPB Issues FAQs Regarding Credit Cards, Prepaid, and Deposit Accounts

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On May 13, 2020, the Consumer Financial Protection Bureau (CFPB) issued two sets of FAQs. The first set of FAQs is directed to providers of checking, savings, and prepaid accounts. The second set of FAQs is directed to creditors that extend open-end (not home-secured) credit. These are the latest in a series of COVID-19 FAQs issued by the CFPB. We previously issued alerts on CFPB FAQs on mortgage servicing in light of the CARES Act's forbearance provisions, bona fide personal emergency waivers under Regulation Z, and the application of ECOA to PPP loans.

FAQs for Providers of Checking, Deposit, and Prepaid Accounts

In this series of FAQs, the CFPB addresses provisions in Regulations E, which implements the Electronic Fund Transfer Act, and Regulation DD, which implements in the Truth in Savings Act, relevant to providers of covered deposit accounts during the COVID-19 pandemic. The first two FAQs explain the application of the change of terms provisions in Regulation E (§ 1005.7(b)(5)) and Regulation DD (§ 1030.5(a)(1)) and the third addresses temporary dispensation for consumers. Importantly, as Regulation DD only applies to accounts issued by depository institutions, the Regulation DD FAQs do not apply to credit unions and non-banks.

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For changes not favorable to the consumer, such as an increase in a fee, Regulation E requires a financial institution to provide the consumer with at least 21 days' notice before implementing the change, and Regulation DD requires a financial institution to provide the consumer with at least 30 days' notice. For changes favorable to a consumer, the CFPB reminds financial institutions no advance notice is required. The CFPB provides several examples of changes exempt from advance notice, including the reduction or elimination of an ATM or account maintenance fee or compliance with the Federal Reserve Board's recent announcement that it is temporarily eliminating the six-transfer-per-month limitation on savings accounts. The CFPB warns that if changes are temporary and a financial institution chooses to raise a fee or add a restriction after the pandemic wanes, it must comply with the advance change in terms notice requirements.

In the third FAQ, the CFPB reminds financial institutions they can provide occasional fee waivers so long as the waivers comply with other applicable law. The FAQ encourages institutions to institute waivers before receiving a request from a consumer, so as to benefit more consumers and reduce customer service queues. The CFPB also reminds financial institutions of their obligations to honor stop payment requests from consumers relating to preauthorized transfers consumers may have set up for recurring bills or expenses, such as monthly memberships.

FAQs for Providers of Open-End (not home-secured) Credit

In this series of FAQs, the CFPB addresses open-end (not home-secured) provisions in Regulation Z, which implements the Truth in Lending Act and the Fair Credit Billing Act.

In the first FAQ, the CFPB reminds creditors Regulation Z (12 C.F.R. § 1026.9(c)(2)(i)(A)) requires a creditor to provide 45 days advance notice of a

“significant” change in terms. The CFPB explains this does not apply to actions taken to assist a consumer, such as a decision to extend a grace period, reduce a finance charge or other fee, or take other action to temporarily reduce hardship on a consumer.

In the second FAQ, the CFPB addresses how to communicate temporary hardship arrangements to consumers. The CFPB explains that when a creditor enters into a temporary hardship arrangement with a consumer by telephone the relief can commence after the creditor provides the consumer with an oral disclosure of the terms of the arrangement including those that will apply at the end of the arrangement. 12 C.F.R. § 1026.9(c)(2)(v)(D). If this information is provided orally, the creditor must also mail or deliver a written disclosure of the terms to the consumer. 12 C.F.R. § 1026.9(c)(2)(v)(D)(2). Additionally, the terms that begin to apply at the end of the hardship arrangement must be as favorable to the consumer as the terms that applied prior to the beginning of the hardship arrangement. 12 C.F.R. § 1026.9(c)(2)(v)(D)(1). Creditors are also encouraged, but not required, to remind consumers as they near the end of a temporary forbearance period so consumers can prepare to resume paying according to pre-forbearance terms.

The third FAQ addresses creditors’ engagement with consumers during the pandemic. The CFPB acknowledges communication challenges caused by the pandemic and encourages proactive communication with consumers before they experience problems related to their credit accounts. The CFPB encourages use of account inserts and alerts to consumers explaining the creditor’s and the CFPB’s online COVID-19 resources. Finally, the CFPB encourages use of electronic disclosure, in accordance with the E-SIGN Act, as a means of expediting communications with consumers. Creditors are reminded they cannot obtain E-SIGN consent over the phone due to the requirement that a consumer demonstrate an ability to receive electronic communications. A creditor can, however,

obtain an e-mail address over the phone and use that to establish E-SIGN consent.

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