



Innovative Payments Association

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June 24, 2019

Submitted via E-Mail at: 2019-Notice-RFAReviewOverdraft@cfpb.gov

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Bureau of Consumer Financial Protection
Overdraft Rule Review Pursuant to the Regulatory Flexibility Act
[Document No. CFPB-2019-0023]

To Whom it May Concern:

This letter is submitted to the Consumer Financial Protection Bureau (the "CFPB") on behalf of the Innovative Payments Association ("IPA")¹ in response to the CFPB's Notice of Section 610 Review and Request for Comments with respect to the 2009 Overdraft Rule (the "Notice").² The Notice seeks feedback regarding the 2009 amendments to Regulation E limiting the ability of financial institutions to assess overdraft fees for paying ATM and one-time debit card transactions that overdraw consumers' accounts (the "Overdraft Rule").³ The IPA appreciates the opportunity to provide comments and feedback to the CFPB on this topic. While our members do not have specific feedback on the overall economic impact of the Overdraft Rule itself, they wish to note the disparity of treatment between products and services covered under the Overdraft Rule and the very similar products and services that come under the purview of the CFPB's prepaid account rule (the "Prepaid Rule").⁴ In particular, our members note that products and services under the Prepaid Rule, which often operate very similarly to, or even indistinguishably from, traditional debit account products, are subject to a far more complex and onerous regulatory process in order to provide the exact same type of overdraft service contemplated by the Overdraft Rule. The end result is a marketplace where similarly structured and situated products operate on an unequal playing field, with products covered by the Prepaid Rule forced in most cases to abandon offering overdraft services in light of the additional compliance challenges and costs. For this reason, we urge the CFPB to consider the need for parity in its treatment of similarly situated products offering the same services in the marketplace, and, with respect to prepaid account, to subject these products to same requirements for overdraft services that apply to debit account products.

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² 84 Fed. Reg. 21729 – 21732 (May 15, 2019).

³ See 74 FR 59033, 59037 (Nov. 17, 2009).

⁴ 81 CFR 83934 – 84387 (Nov. 22, 2016).



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The Overdraft Rule imposes certain requirements on a financial institution prior to assessing a fee against a consumer's account in conjunction with an overdraft service.⁵ The general thrust of the Overdraft Rule's requirements is informed and affirmative consent that is revocable. Specifically, a consumer must opt-into an overdraft service after disclosure of relevant details from the financial institution and then be notified of her right to revoke such consent. To achieve this, the Overdraft Rule requires financial institutions seeking to provide an "overdraft service" to consumers to satisfy the following four criteria:⁶

- Notify the consumer in writing, or, if agreed to by the consumer, electronically, of the financial institution's overdraft service. The required notice must contain certain information and be substantially similar to a model form,⁷ provided to assist financial institutions in complying with this requirement.
- Allow the consumer a reasonable opportunity to affirmatively consent or opt-in to the overdraft service.
- Obtain the consumer's affirmative consent to the overdraft service.
- Confirm the consumer's consent in writing with a statement informing the consumer of their right to revoke his or her consent.

In contrast to the disclosure and informed affirmative consent approach taken under the Overdraft Rule for traditional debit account products, the CFPB's Prepaid Rule contains a far more complex and onerous process for prepaid account providers to comply with in order to offer similar overdraft services to their consumers. The CFPB's prepaid rule amends Regulation-E and Regulation-Z to regulate overdraft credit features offered in connection with prepaid accounts. In effect, the Prepaid Rule takes any prepaid account product that offers a covered overdraft or credit feature and treats that product as a "hybrid prepaid-credit card," at once subjecting the product to the consumer protection obligations contained in both Regulation-E and Regulation-Z. Just a few of the additional requirements the Prepaid Rule imposes on providers seeking to offer an overdraft service include imposing a 30-day waiting period after a prepaid account is registered before soliciting a consumer to add an additional credit feature, requiring providers to conduct an ability-to-repay analysis in evaluating an application for an additional credit feature with a prepaid account, and complying with Regulation-Z requirements for account-opening disclosures, change in terms notices, and periodic statements. The end result of these requirements is that, as compared with overdraft services offered under the purview of the Overdraft Rule, it is now far more difficult and costly for prepaid providers to offer similar overdraft services to consumers under the Prepaid Rule.

The IPA's members do not believe there is a rational basis for the markedly different treatment for overdraft and credit features offered in connection with prepaid accounts under the Prepaid Rule, from how the same types of features are treated when they are offered in conjunction with a debit card connected to a traditional checking account under the Overdraft Rule. It is important to note that prepaid accounts are

⁵ 12 CFR § 1005.17.

⁶ *Id.* § 1005.17(b).

⁷ *Id.* § 1005.17(d); Model Form A-9, Model Consent Form for Overdraft Services § 1005.17, available in Appendix A to part 1005.



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designed to provide access to financial services for low and moderate-income consumers who might not otherwise have access to a traditional bank account and are also the only financial services products in the market today that are subject to the limitations imposed under the Prepaid Rule. Thus, for all practical purposes, the Prepaid Rule creates an uneven playing field for prepaid accounts vis-a-vis other payment types, which will ultimately have an impact on how a consumer views the product. Our members believe such a result makes little to no sense, particularly when considering the fact that prepaid account products make up less than 1% of the consumer complaints the CFPB received since 2011.⁸

On its face, it appears that the Prepaid Rule attempts to treat consumers who may have affirmatively selected to use prepaid accounts to access their money, much differently than consumers who have decided to open a traditional bank account with an associated debit card. Accordingly, it seems that prepaid account users will simply not have the same flexibility to choose the bank features that meet their specific needs like their debit card counterparts. This is particularly troubling considering that the limitations on such features included in the Prepaid Rule hinge on the access device selected by the consumer when they open their bank account and whether such device falls under the Prepaid Rule or the Overdraft Rule. The restrictions in place today will make it impracticable for prepaid account providers to continue offering account features that take advantage of the full range of a prepaid account's potential benefits for consumers.

For these reasons we ask the CFPB as part of its review of the Overdraft Rule under the Notice to consider the need for parity in its treatment of similarly situated products offering the same services in the marketplace.

Conclusion

The IPA appreciates the opportunity to submit feedback on the Notice. If you have any questions, please do not hesitate to contact me at the number listed below or at: btate@ipa.org.

Sincerely,

Brian Tate
President and CEO
IPA

⁸ See data available through the CFPB Consumer Complaint Database Reports, available at <https://www.consumerfinance.gov/complaint/data-use/#reports>. This includes the CFPB's latest complaint snapshot released in Jan. 2019, which indicated that the period of Nov. 1, 2016 through Oct. 31, 2018, prepaid accounts accounted for just 4,795 of the 646,199 complaints received by the CFPB. https://files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortgage_2019-01_liwsYNV.pdf.



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