

# Client Alert

---

March 10, 2017

## CFPB Proposes Delayed Effective Date of Prepaid Accounts Rule, Releases Short-Form Disclosure Guide

By Rick Fischer, Obrea O. Poindexter, and Jeremy R. Mandell

Yesterday, the Consumer Financial Protection Bureau (Bureau or CFPB) announced in a [blog post](#) a [proposal](#) to delay the effective date of the final rule on prepaid accounts (Final Rule) for six months to April 1, 2018. The Bureau also released, earlier this week, a guide for preparing the short-form disclosure required under the Final Rule.

### PROPOSAL TO DELAY EFFECTIVE DATE OF THE FINAL RULE

According to the blog post announcing the proposed delay, the Bureau “want[s] the rule to become effective as soon as possible”; however, it has “learned that some industry participants believe they will have difficulty complying with certain provisions of the rule by the current October 1, 2017 effective date.” The Bureau believes that “delaying the effective date by six months will be sufficient for industry participants to ensure they can comply with the rule.”

The Bureau proposal comes in the context of—but does not expressly reference—the Trump Administration’s [memorandum](#) calling for a regulatory freeze and a temporary postponement of the effective date of finalized rules for “the purpose of reviewing questions of fact, law, and policy they raise.” Although the CFPB’s blog post states that the agency is “not proposing to change any other part of the prepaid accounts rule at this time,” the proposal itself sends a different message. Specifically, the proposal provides that:

[D]elaying the effective date will allow the Bureau to more closely evaluate concerns raised by industry participants regarding certain substantive aspects of the Prepaid Accounts Final Rule that they assert are posing particular complexities for implementation or may have negative consequences for consumers that were not anticipated or fully explained by commenters in response to the Prepaid Accounts NPRM, and to propose revisions to those provisions of the Prepaid Accounts Final Rule if it determines that amendments are necessary and appropriate.

Accordingly, the proposal suggests that the CFPB may be willing to consider substantive changes to the Final Rule. The blog entry also provides that if the Bureau “determine[s] that any substantive changes to the prepaid accounts rule are necessary and appropriate, we will issue a separate proposal and provide the public an opportunity to comment on those changes before finalizing.” As a result, industry participants should identify and comment on remaining problems presented by the Rule, as well as commenting on the delayed effective date.

The proposal also comes at a time that three Congressional resolutions have been introduced to subject the Final Rule to review under the Congressional Review Act.

Comments on the proposal will be due 21 days after it is published in the *Federal Register*.

# Client Alert

## GUIDE FOR PREPARING SHORT-FORM DISCLOSURES

On March 7, 2017, the CFPB released a [guide](#), entitled “Preparing the Short Form Disclosure for Prepaid Accounts” (“Guide”). The Guide is intended to assist financial institutions in preparing the short-form pre-acquisition disclosures required by section 1005.18(b) of the Final Rule. Using one of the model forms from the Final Rule, the Guide provides step-by-step instructions for preparing the short-form disclosure, including with respect to content, format and appearance requirements. The specific requirements of the short- and long-form pre-acquisition disclosures are discussed in our earlier [client alert](#) on the subject.

### Content Requirements

The Guide steps through each of the fees and related statements required under the Final Rule. First, the Guide lists each “static fee”—i.e., the periodic fee, per-purchase fee, ATM withdrawal fees, cash reload fee, ATM balance inquiry fees, customer service fees, and inactivity fee—and outlines how each fee needs to be described in the short-form disclosure and how the disclosed fee amount needs to be determined.

For example, with respect to the periodic fee, the fee must be labeled with the appropriate term to reflect the applicable time period for which a periodic fee may be charged (e.g., “Monthly fee” or “Annual fee”). The amount of the periodic fee listed must be the highest amount that may be charged, but a financial institution may insert a symbol following the fee amount (e.g., “+”) linked to a statement explaining the circumstances under which a waiver or reduction of the periodic fee may occur.

The Guide reminds financial institutions that the short-form disclosure must include information about each static fee, even if the fee is not imposed on the prepaid account or is offered free of charge. If a financial institution does not charge the customer a particular fee, “\$0” must be entered as the fee amount, or where a particular feature is not offered, “N/A” must be entered in place of the fee amount to indicate the feature is not applicable.

The Guide also covers “additional fee types,” which may vary for different prepaid account programs. Specifically, the short-form disclosure must include (1) the number of additional fee types charged; (2) a statement that directs the consumer to the listing of additional fee types; and (3) the names and fee amounts of up to two additional fee types that are required or permitted to be disclosed under the Final Rule.

The Guide also describes certain statements that are required under the Final Rule in the short-form disclosure, including the following:

- Where a covered separate credit feature may be offered, the time period within which it may be offered and that fees would apply. (If no such feature will be offered, the financial institution must state “No overdraft/credit feature.”)
- A statement directing the consumer to register the prepaid account in order to qualify for FDIC deposit insurance or NCUA share insurance, as applicable. (Alternatively, a statement should be included that the funds in the prepaid account are not insured.)
- A statement directing the consumer to the CFPB’s website for general information regarding prepaid accounts.
- A statement directing the consumer to the required pre-acquisition long-form disclosure for the prepaid account in order to view details and conditions for all fees and services, as well as a phone number that can be used to access an oral version of the long-form disclosure and a website URL to access an electronic version.

# Client Alert

---

## Format and Appearance Requirements

The Guide outlines the specific formatting requirements for the short-form disclosure set forth in the Final Rule. The formatting requirements include prominence and minimum font (or pixel) requirements, a tabular format for certain elements, as well as specific grouping and segregation requirements. The Guide steps through each component of the short-form disclosure and describes the applicable minimum font size or number of pixels, positioning and grouping requirements.

### Contact:

**Rick Fischer**

(202) 887-1566

lfischer@mofo.com

**Obrea O. Poindexter**

(202) 887-8741

opoindexter@mofo.com

**Jeremy R. Mandell**

(202) 887-1505

jmandell@mofo.com

# Client Alert

## Financial Services Team

### California

Michael J. Agolia	(415) 268-6057
Alexis A. Amezcua	(415) 268-6557
Elizabeth Balassone	(415) 268-7585
Roland E. Brandel	(415) 268-7093
Sarah Nicole Davis	(415) 268-7478
Henry M. Fields	(213) 892-5275
Joseph Gabai	(213) 892-5284
Angela E. Kleine	(415) 268-6214
Jim McCabe	(415) 268-7011
James R. McGuire	(415) 268-7013
Mark David McPherson	(212) 468-8263
Ben Patterson	(415) 268-6818
Sylvia Rivera	(213) 892-5734
Nicholas Alan Roethlisberger	(415) 268-7534
Grant C. Schrader	(415) 268-6635
William L. Stern	(415) 268-7637
Nancy R. Thomas	(213) 892-5561
Lauren Lynn Wroblewski	(415) 268-6458

### New York

James M. Bergin	(212) 468-8033
Meghan E. Dwyer	(212) 336-4067
Tiffani B. Figueroa	(212) 336-4360
David J. Fioccola	(212) 336-4069
Marc-Alain Galeazzi	(212) 336-4153
Adam J. Hunt	(212) 336-4341
Jessica Kaufman	(212) 336-4257
Mark P. Ladner	(212) 468-8035
Jiang Liu	(212) 468-8008
David H. Medlar	(212) 336-4302
Barbara R. Mendelson	(212) 468-8118
Michael B. Miller	(212) 468-8009
Judy Man Ni Mok	(212) 336-4073
Jeffrey K. Rosenberg	(212) 336-4130
Mark R. Sobin	(212) 336-4222
Joan P. Warrington	(212) 506-7307

### Washington, D.C.

Rick Fischer	(202) 887-1566
Adam J. Fleisher	(202) 887-8781
Natalie A. Fleming Nolen	(202) 887-1551
Calvin D. Funk	(202) 887-6930
Julian E. Hammar	(202) 887-1679
Oliver I. Ireland	(202) 778-1614
Crystal N. Kaldjob	(202) 887-1687
Steven M. Kaufmann	(202) 887-8794

### Washington, D.C. (continued)

Donald C. Lampe	(202) 887-1524
Jeremy R. Mandell	(202) 887-1505
Amanda J. Mollo	(202) 778-1609
Obrea O. Poindexter	(202) 887-8741
Ryan J. Richardson	(202) 887-8761
Sean Ruff	(202) 887-1530
Trevor R. Salter	(202) 887-1527
Nathan D. Taylor	(202) 778-1644

# Client Alert

---

## **About Morrison & Foerster:**

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for 13 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.*