

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1005**

**Treatment of Pandemic Relief Payments Under Regulation E and Application of the Compulsory Use Prohibition**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interpretive rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule to provide guidance to government agencies distributing aid to consumers in response to the COVID-19 pandemic. The Bureau concludes in this interpretive rule that certain pandemic-relief payments are not “government benefits” for purposes of Regulation E and the Electronic Fund Transfer Act (EFTA) and are therefore not subject to the compulsory use prohibition in EFTA, if certain conditions are met. Specifically, government benefits do not include payments from Federal, State, or local governments if those payments: (1) are made to provide assistance to consumers in response to the COVID-19 pandemic or its economic impacts; (2) are not part of an already-established government benefit program; (3) are made on a one-time or otherwise limited basis; and (4) are distributed without a general requirement that consumers apply to the agency to receive funds.

**DATES:** This interpretive rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact

## **SUPPLEMENTARY INFORMATION:**

### **I. Discussion**

#### *A. Background*

Section 913 of the Electronic Fund Transfer Act (EFTA) provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.<sup>1</sup> This provision, often referred to as the compulsory use prohibition, is implemented in § 1005.10(e)(2) of Regulation E.

In the mid-1990s, the Board of Governors of the Federal Reserve System (Board) extended consumer protections under Regulation E to accounts established by government agencies for distributing benefits to consumers electronically (government benefit accounts).<sup>2</sup> Government benefits covered under the rule include Federally-administered government benefit programs and non-needs tested State and local government benefit programs (they do not include accounts for distributing needs-tested benefits in programs established under State or local law or administered by a State or local agency).<sup>3</sup> Provisions specific to government benefit accounts were codified in § 1005.15 of Regulation E.

On October 5, 2016, the Bureau issued a final rule titled “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)” (2016 Final Rule).<sup>4</sup> The Bureau subsequently amended the 2016 Final Rule twice, in 2017 and

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<sup>1</sup> 15 U.S.C. 1693k(2).

<sup>2</sup> 59 FR 10678 (Mar. 7, 1994) and 62 FR 43467 (Aug. 14, 1997).

<sup>3</sup> *See* § 1005.15(a)(2).

<sup>4</sup> 81 FR 83934 (Nov. 22, 2016).

2018.<sup>5</sup> The 2016 Final Rule, as subsequently amended, is referred to herein as the Prepaid Accounts Rule. The Prepaid Accounts Rule, among other things, extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts. The definition of “prepaid account” in the Prepaid Accounts Rule includes government benefit accounts (as defined in § 1005.15(a)(2)), which were already covered by Regulation E as described above. The Prepaid Accounts Rule generally maintained the existing provisions specific to government benefit accounts, while adding certain new requirements such as pre-acquisition disclosures. The Prepaid Accounts Rule did not change the compulsory use prohibition in § 1005.10(e) of Regulation E, but did add commentary to clarify the compulsory use prohibition’s application to government benefits (comment 10(e)(2)-2), which is in line with pre-existing commentary regarding payroll (comment 10(e)(2)-1).

Federal, State, and local governments are considering a variety of approaches to providing consumers relief from the economic impacts of the COVID-19 pandemic. These approaches may include government distribution of funds directly to consumers, in some cases outside of existing government benefit programs. In some cases, the relevant governmental agencies may not have access to consumers’ account information, such as account and routing numbers, and therefore may have difficulty disbursing funds via direct deposit in a timely manner; in other cases, consumers may not have a pre-existing account that is capable of receiving funds via direct deposit.

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<sup>5</sup> See 82 FR 18975 (Apr. 25, 2017) and 83 FR 6364 (Feb. 13, 2018). These amendments, among other things, extended the effective date of the Prepaid Accounts Rule to April 1, 2019.

## *B. Use of Electronic Fund Transfers in Government Benefit Disbursement*

The Bureau notes that Regulation E provides significant flexibility to government agencies that wish to disburse government benefits via electronic fund transfers. As stated above, EFTA and Regulation E prohibit requiring consumers to establish accounts for receipt of electronic fund transfers with a particular financial institution as a condition of receipt of a government benefit.<sup>6</sup> The compulsory use prohibition does not require the agency to also offer payment through *any* other method the consumer may prefer; it simply requires that government agencies provide the consumer *a* choice. Specifically, comment 10(e)(2)-2 to Regulation E states that a government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit.<sup>7</sup>

In the preamble to the 2016 Final Rule, the Bureau recognized that in some cases, circumstances may require that financial institutions or other persons disburse funds to consumers within a certain period. Consumers may be presented with options of how to receive payment but fail to exercise a choice. In such cases, the Bureau noted that, depending on the facts and circumstances, it may be reasonable for a financial institution or other person in this scenario to employ a reasonable default enrollment method.<sup>8</sup>

## *C. Application of the Compulsory Use Prohibition to COVID-19 Pandemic Relief Payments*

The Bureau is aware of the extraordinary circumstances created by the COVID-19 pandemic and the impact the pandemic has had, and will continue to have, on consumers.

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<sup>6</sup> See EFTA section 913(a)(2) (15 U.S.C. 1693k(2)) and § 1005.10(e)(2).

<sup>7</sup> Government agencies are permitted to provide paper checks as an option for payment, but are not *required* to do so by EFTA or Regulation E. Similarly, government agencies may, but are not required to, offer direct deposit into an account of the consumer's choosing as an alternative method of payment.

<sup>8</sup> 81 FR 83934, 83985 (Nov. 22, 2016).

Government agencies are responding to these impacts by disbursing funds directly to consumers, among other measures.

In response to the pandemic and its effects, it is important for consumers to be able to receive economic stimulus payments in a fast, secure, and efficient manner. The Bureau believes that consumers, for many reasons, will typically prefer to receive these payments via direct deposit into an existing account of their choosing, if they have such an account. However, the Bureau appreciates that government agencies making these disbursements will not be able to make all of these payments via direct deposit to an account of the consumer's choice.

Government agencies may be unable to do so either because they do not have access to the account information, such as account and routing numbers, for some consumers, or because some consumers receiving payments do not have a pre-existing account that can accept direct deposits. In such cases, 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.<sup>9</sup>

Given the unique nature of this type of pandemic relief payment, the Bureau believes it is reasonable to interpret the term “government benefit,” as used in EFTA section 913 and Regulation E § 1005.10(e)(2), to exclude certain of these payments. Specifically, the Bureau

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<sup>9</sup> In addition, consumers without a pre-existing account will typically need to visit an in-person location, such as a check cashing outlet, to obtain cash from a paper check.

interprets the term “government benefit” to exclude payments from Federal, State, or local governments if those payments are made:

1. *To provide assistance to consumers in response to the COVID-19 pandemic or its economic impacts;*
2. *Outside of an already-established government benefit program:* For example, payments made pursuant to an existing government benefit program would not qualify for this exclusion, even if the volume or dollar value of the program’s payments is increased due to the COVID-19 pandemic;
3. *On a one-time or otherwise limited basis:* Thus, a limited series of related payments made to the same consumer could qualify for this exclusion; and
4. *Without a general requirement that consumers apply to the agency to receive funds:* Filing a tax return, or consumer provision of information necessary to complete a consumer identification and verification process prior to activating an access device, does not by itself constitute an application to receive funds.

The term “government benefit” is not defined in EFTA or Regulation E. However, the Bureau’s interpretation herein is aligned with a common understanding of the scope of the term “government benefit.” In the preamble to its 2016 Final Rule, the Bureau identified examples of government benefit programs that were covered by the Board’s 1994 and 1997 rulemakings.<sup>10</sup> In contrast, the payments that would not be considered a government benefit under this interpretive rule are one-time or otherwise limited payments specifically in response to the COVID-19 pandemic, not part of any existing government benefit program. Further, for

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<sup>10</sup> See 81 FR 83934, 83995 (Nov. 22, 2016). This interpretive rule does not change the status of any existing government benefit program under Regulation E.

payments under this interpretation, consumers likely would not generally be required to apply to the government for these types of pandemic relief payments, which may make it difficult for government agencies to determine consumers' payment preferences while making payments in a timely manner.

Direct deposit is generally the fastest, most efficient, and most secure way to disburse funds to consumers, but to make payments in that manner a government agency needs to have access to consumers' account information. However, given the unique circumstances due to the COVID-19 pandemic, the Bureau recognizes that payments covered by this interpretive rule are different than government benefits referred to in § 1005.10(e)(2). Thus, a government agency (as well as persons acting on behalf of a government agency) may require consumers to establish an account with a particular financial institution as a condition of receiving pandemic relief payments that meet the above conditions under this interpretive rule.

This interpretive rule is limited to the definition of "government benefit" under Regulation E and EFTA. Therefore, while accounts established to receive pandemic relief payments, as described above, do not constitute government benefit accounts as defined in § 1005.15(a)(2), the Bureau emphasizes that they may still be "prepaid accounts" under one of the other prongs of that definition in § 1005.2(b)(3).<sup>11</sup> However, the Bureau notes Regulation E excludes from the definition of "prepaid account" (and therefore coverage under Regulation E) an account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments (*i.e.*, funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b)).<sup>12</sup>

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<sup>11</sup> To the extent that they are prepaid accounts, the requirements of the Prepaid Accounts Rule (including the rule's pre-acquisition disclosure requirements) apply.

<sup>12</sup> See § 1005.2(b)(3)(ii)(B) and comment 2(b)(3)(ii)-2.

The Bureau is issuing this interpretive rule based on its authority to interpret EFTA and Regulation E, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.<sup>13</sup>

By operation of EFTA section 916(d), no provision of EFTA sections 916 or 917 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.<sup>14</sup>

## **II. Effective Date**

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.<sup>15</sup> Therefore, this rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the same date that it is published in the *Federal Register*.

## **III. Regulatory Requirements**

This rule articulates the Bureau's interpretation of Regulation E and EFTA. As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>16</sup> Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>17</sup>

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<sup>13</sup> 12 U.S.C. 5512(b)(1). The relevant provisions of EFTA and Regulation E form part of Federal consumer financial law. 12 U.S.C. 5481(12)(C), (14).

<sup>14</sup> 15 U.S.C. 1693m(d).

<sup>15</sup> 5 U.S.C. 553(d).

<sup>16</sup> 5 U.S.C. 553(b).

<sup>17</sup> 5 U.S.C. 603(a), 604(a).

The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.<sup>18</sup>

#### **IV. Congressional Review Act**

Pursuant to the Congressional Review Act,<sup>19</sup> the Bureau will submit a report containing this interpretive rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

#### **V. Signing Authority**

The Director of the Bureau, having reviewed and approved this document is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: April 13, 2020.

*/s/ Laura Galban*

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**Laura Galban,**

*Federal Register Liaison, Bureau of Consumer Financial Protection.*

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<sup>18</sup> 44 U.S.C. 3501-3521.

<sup>19</sup> 5 U.S.C. 801 *et seq.*