

August 14, 2017

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

**RE: Amendment to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) [Docket No. CFPB—2017—0015]**

Dear Ms. Jackson:

Americans for Financial Reform<sup>1</sup>, the Center for Responsible Lending<sup>2</sup>, the Center for Digital Democracy<sup>3</sup>, Consumers Union<sup>4</sup> the policy and mobilization arm of Consumer Reports, the National Consumer Law Center<sup>5</sup>, U.S. PIRG<sup>6</sup> and the Woodstock Institute<sup>7</sup> appreciate this opportunity to comment on the Bureau's amendment to rules concerning prepaid accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z). We are pleased that the Prepaid Accounts Rule ensures that consumers who use prepaid cards to make purchases and manage their money get important protections under law. While we generally do not oppose the proposed amendments, we urge that those portions of the Prepaid Accounts Rule under review be extended to include the following recommendations:

- Expand the definition of verified and registered accounts to include compulsory use cards issued to known persons (e.g. jury, prison release or security deposit refunds) and require that these cards be extended error resolution rights and limits on liability in accordance with the Electronic Fund Transfer Act (Regulation E);

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<sup>1</sup> Americans for Financial Reform is an unprecedented coalition of more than 200 national, state, and local groups who have come together to reform the financial industry. Our members include consumer, civil rights, investor, retiree, community, labor, faith-based, and business groups. A list of coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

<sup>2</sup> The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions.

<sup>3</sup> The Center for Digital Democracy is a leading nonprofit organization focused on empowering and protecting the rights of the public in the digital era.

<sup>4</sup> Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually.

<sup>5</sup> The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues. NCLC joins these comments on behalf of its low-income clients.

<sup>6</sup> U.S. PIRG serves as the non-profit, non-partisan federation of state Public Interest Research Groups. PIRGs stand up to powerful interests whenever they threaten our health and safety, our financial security, or our right to fully participate in our democratic society. On the web at [uspirg.org](http://uspirg.org).

<sup>7</sup> Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity.

- For pre-existing credit cards that are currently included in, but are proposed to be exempt from, the definition of hybrid prepaid credit card accounts under the Truth in Lending Act (Regulation Z), require these credit plans to comply with the provision allowing for periodic deductions only if they are limited to one deduction per calendar month. In addition, clarify the definition of traditional credit card for purposes of exclusion from the rule;
- Prohibit compulsory use of cards for government payments, insurance or workers' comp proceeds and return of funds upon release from prison or jail; or alternatively, ban common usage, account closure and junk fees for compulsory use prepaid cards.

As we have discussed in previous comments, we continue to urge the Bureau to clarify the distinction between prepaid accounts and checkless checking in order to prevent evasions.<sup>8</sup>

We appreciate the Bureau's thoughtful approach to this rulemaking and oppose any further delay of the Prepaid Accounts Rule's effective date.

#### **A. PREPAID CARDS ISSUED TO KNOWN PERSONS SHOULD BE CONSIDERED VERIFIED AND REGISTERED AT ISSUANCE FOR THE PURPOSES OF ERROR RESOLUTION RIGHTS AND LIMITATIONS ON LIABILITY.**

A proposed amendment to the rule would apply error resolution rights and limits on liability only to verified accounts, including accounts that are later verified if the disputed transactions occurred before the account was verified so long as the timing requirements are met. The rule allows for the unsolicited issuance of some kinds of prepaid account access devices and does not provide full protections for those cards if the issuer does not have a provision for verifying the account holder.

However, there are some unsolicited prepaid cards, such as prepaid cards that are for payment for jury service, release from prison, or a refund for utility service, that are provided to persons already known. These payments may be substantial and are likely primarily for household purposes.

Consumer funds loaded onto prepaid cards should be protected from unlimited loss. To that end, we propose that the rule be amended to ensure that where the person is known to the furnisher of the prepaid account, the prepaid account is deemed registered and verified upon issuance for the purposes of error resolution rights and limits on liability. In the examples cited here, these are not anonymous accounts. The provider has an existing relationship with the account recipient, including access to consumer information such as name, address, and often Social Security number or driver's license information. Upon issuance of accounts to these known persons, having them considered verified and registered prevents consumers from losing these important funds to errors or fraud, while ensuring that financial institutions have the necessary information to investigate claims of unauthorized use or error.

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<sup>8</sup> Letter from National Consumer Law Center et al. to Monica Jackson, Secretary, Consumer Financial Protection Bureau, (April 5, 2017), available at <https://www.nclc.org/images/pdf/rulemaking/comments-prepaid-extension-group.pdf>.

**B. THE LIMITED EXCEPTION FOR LINKING CERTAIN CREDIT CARDS TO PREPAID ACCOUNTS SHOULD NOT BE WEAKENED; THE DEFINITION OF TRADITIONAL CREDIT CARD SHOULD BE CLARIFIED; AND ANY PLANS ALLOWING FOR PERIODIC DEDUCTIONS SHOULD BE LIMITED TO NO MORE THAN ONE DEDUCTION PER CALENDAR MONTH ON THE DATE DISCLOSED ON THE STATEMENT FOR THE CREDIT ACCOUNT.**

The final prepaid rule includes common sense protections for the extension of credit, and contains essential safeguards to prevent evasion. The rule requires that hybrid prepaid-credit cards comply with credit card laws, including underwriting and time to repay. The final rule also requires that providers wait 30 days before soliciting consumers to add credit features.

The separation in time between when a prepaid account is acquired and when a consumer may be solicited to add a credit feature to the account is a crucial protection the rule affords. The 30 day delay helps to ensure that consumers are not under undue pressure to get what may be expensive, inappropriate credit. The delay also ensures that consumers have some experience with the service and support provided before they expand the account relationship. We applaud these protections and oppose any efforts to weaken them.

We do not oppose clarifications in the rule in order to ensure that consumers are not barred from immediately linking pre-existing credit cards to mobile wallets that may fit the definition of prepaid accounts. For example, we do not object to amendments to clarify that a consumer may link a pre-existing credit card to a new PayPal account immediately, without waiting 30 days. We also agree that, for the most part, pre-existing traditional credit cards, by definition, already carry most of the new protections for hybrid prepaid-credit cards.

In order to keep strong protections in place for linked credit, we support the proposed conditions on the proposed exemption from the definition of hybrid prepaid-card cards and urge additions to prevent evasions.

**1. Traditional credit card**

First, we agree that exempt credit card accounts must be a “traditional credit card” already protected by the CARD Act and other Regulation Z protections for traditional credit cards (proposed § 1026.61(a)(5)(iii)D(1)). The protections in Regulation Z are important for all of the reasons set forth in the CFPB’s original proposal and in our comments on that proposal. The exemption should not operate to weaken protections.

However, we urge that the definition of traditional credit card be clarified. The proposed exception to the definition of “hybrid prepaid-credit card” requires that the credit card account be accessed “through a traditional credit card.” Proposed Comment 61(a)(5)(iii)(D)(1)-1 then defines “traditional credit card” to mean “a credit card that is not a hybrid prepaid-credit card.”

These definitions are circular. A card is not a hybrid prepaid-credit card if it is a traditional credit card, and it is a traditional credit card if it is not a hybrid prepaid-credit card.

And importantly, the current Regulation Z definition of credit card to issue “credit cards” is quite vague and could arguably apply to accounts that bear no resemblance to traditional credit cards. Under Regulation Z, a credit card is “any card, plate, or other single credit device that may be used from time to time to obtain credit.”<sup>9</sup> There are no specific limitations on what the card or device can be. The Regulation Z Commentary clarifies that a “credit card” can even be

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<sup>9</sup> 12 C.F.R. § 1026.2(a)(15)(i) (2017).

an account number without a device, if it accesses an open-end line of credit to purchase goods or services—on the Internet, for example.<sup>10</sup>

Consequently, we recommend that the Bureau define “traditional credit card” to mean:

1) A card, plate or other single credit device that may be used from time to time to obtain consumer credit under an open-end credit plan and that is either:

(a) Accepted by every merchant that participates in a widely accepted payment card network and is accepted upon presentation at multiple, unaffiliated merchants for goods or services,<sup>11</sup> or

(b) Accepted solely for the bona fide purchase of goods or services at a particular retail merchant or group of merchants and not to access cash,<sup>12</sup>

2) Provided that the term “traditional credit card” does not include an overdraft line of credit that is accessed by a debit or prepaid card or an account number.

## **2. Written request for linkage**

The prepaid account issuer and card issuer should not permit draws from the credit account unless they have received a separately signed or initialed written request (proposed § 1026.61(a)(5)(iii)(D)(2)). We agree that this condition is important to help ensure that the decision to link a prepaid account and a credit account is a deliberate, affirmative decision and consumers should not be pressured to link the two.

In addition, we suggest that the written request should be required to be “clear and readily understandable,” just as written authorizations for preauthorized electronic fund transfers must be.<sup>13</sup>

## **3. Linkage not a condition of credit or of the prepaid account**

We agree that acquisition or retention of the prepaid or credit card account should not be conditioned on linkage of the two (proposed § 1026.61(a)(5)(iii)(D)(3)). Otherwise, linkage would not be truly voluntary.

## **4. Terms should not vary**

We support prohibiting the prepaid account issuer (proposed § 1026.61(a)(5)(iii)(D)(4)) and credit card issuer (proposed § 1026.61(a)(5)(iii)(D)(5)) from varying the terms and conditions of the accounts depending on whether accounts are linked. Here again, if a consumer can only get advantageous terms by linking accounts, the linkage is not voluntary.

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<sup>10</sup> Official Interpretations § 1026.2(a)(15)-2.ii.C (providing that an account number that accesses a credit account is a credit card if the number can access an open-end line of credit to purchase goods or services).

<sup>11</sup> The language in subsection (a) is adapted from the Regulation E definition of “general use reloadable” prepaid card. It is not necessary to include the exclusion for home-secured or home-equity plans as those would already be excluded from the Bureau’s rule.

<sup>12</sup> This provision is intended to capture traditional retail store credit cards but to prevent payday lenders from calling their loan a “credit card” simply because it comes with a card that can be used for a purchase at the payday store or an affiliated merchant. Any card usable at a traditional ATM would be network-branded and fit under the previous provision.

<sup>13</sup> Reg. E, Official Interpretations § 1005.10(b)-6 (2017).

## 5. Automatic payments no more frequently than monthly

In addition to the conditions proposed, we also urge the Bureau to add one more condition to the exemption for pre-existing credit card accounts. **Any credit card account arrangement that is exempt from the definition of hybrid prepaid-credit card under proposed § 1026.61(a)(5)(iii)(D) should be required to comply with new § 1026.12(d)(3)(ii), which permits a written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequently than once per calendar month, on the date disclosed on the credit card statement.**

A monthly payment is the standard for the traditional credit cards that the Bureau is attempting to carve out. A specific rule has not been necessary in the credit card context. But prepaid card credit features have operated more like payday loans or worse, repaid as soon as a deposit hits the account. Consequently, to ensure that consumers have a reasonable time to use the credit and a reasonable time to pay, the 30-day rule is necessary.

The Bureau adopted the monthly payment rule out of concerns that prepaid card issuers could rely on daily or weekly debits to repay any credit feature given the overall creditworthiness of prepaid account holders. The Bureau also noted that issuers might be able to obtain a consumer's written authorization to debit the prepaid account more easily than for other types of credit card accounts because consumers may believe that such authorization is required.

These concerns remain valid despite the conditions that the Bureau is imposing on the exemption for traditional credit cards. While issuers cannot vary the terms of the credit for consumers who do not link the accounts, or condition the credit on linkage, the credit accounts might only be marketed to prepaid account holders. And consumers could be led to believe that linkage is required in the same way that payday installment lenders have regularly found ways to effectively force borrowers to authorize automatic repayment.

We are not aware of any traditional credit cards that currently require payments more frequently than monthly. Consequently, adding this condition would be consistent with the narrow exception that the Bureau is attempting to draw.

Notably, our proposal would not impose a monthly payment requirement on all credit cards exempt from the definition of hybrid prepaid-credit card. It merely prohibits automatic repayment by offset from the prepaid account unless those payments are no more frequently than monthly.

### **C. THE PROHIBITION ON COMPULSORY USE PREPAID CARDS SHOULD BE EXTENDED TO INCLUDE GOVERNMENT PAYMENTS, INSURANCE OR WORKERS' COMPENSATION PROCEEDS, REFUNDS OF SECURITY DEPOSITS AND RETURN OF FUNDS UPON RELEASE FROM PRISON OR JAIL.**

The Bureau has proposed to alter the disclosures for prepaid accounts that the consumer has no choice about accepting. The proposed amendments effectively endorse the concept that prepaid cards may be forced on consumers. That is a troubling concept, and the Bureau should mitigate the damage by limiting the compulsory use of prepaid accounts.

The compulsory use ban in Regulation E currently applicable to wages and public benefits should be extended to several other types of prepaid cards: government payments, such as payments for jury service; insurance or workers compensation; refunds for public utilities<sup>14</sup> or

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<sup>14</sup> For example AEP Ohio, a utility company, only allows refunds via prepaid card: *"AEP Ohio is now offering residential customers who have a refund a Prepaid Visa Card. The cards will be mailed to customers from CitiBank. This refund information applies to residential customers.... Once a customer receives their Visa Card in the mail, the customer can elect to either start using the VISA card for purchases, they can request a transfer of the amount to*

security deposits on real or personal property; return of funds upon release from prison or jail;<sup>15</sup> and any other funds that are legally owed to the consumer. Like any prepaid card, these cards can be full of fees that could be avoided if the consumer is allowed to choose a different payment method, such as fund transfer to an existing account.

Prepaid cards should not be used as a vehicle for giving consumers money they are owed unless consumers have a choice in the matter. Barring coercive use of these products helps to ensure consumer choice, and may provide greater value.

The rationale and authority for expanding the ban on compulsory use is discussed in our earlier comments in more detail.<sup>16</sup>

#### **D. IN THE ABSENCE OF A BAN ON COMPULSORY USE CARDS, THE BUREAU SHOULD LIMIT THE FEES ON UNSOLICITED PREPAID CARDS.**

If the Bureau does not prohibit the compulsory use of prepaid cards, it should limit the fees on cards that are provided on an unsolicited basis. Using its authority over compulsory use and unsolicited cards, the rules should permit an issuer to send an unsolicited card only if the card meets minimum requirements and has a truly convenient method to access the funds to the penny without fees. To protect consumers from unfair fees, unsolicited cards should come with:

- Unlimited free withdrawals at network ATMs;
- No PIN debit fees, which are incurred if a consumer asks for cash back from a purchase;
- At least one other method that permits a full, fee-free withdrawal to the penny;
- No legal process or other penalty fees that are not reasonable and proportional to the violation as set forth in Regulation Z;
- No fees for research or other fees for complying with the issuer's legal responsibilities or that inhibit the consumer from exercising legal rights;
- No inactivity fees; and
- No fees to close the account.

If adopted, these fee limits will make full access to the consumer's money a reality.

**At a bare minimum, for any prepaid account that is provided to the consumer without the option of rejecting the account, the consumer should be provided a clear and readily understandable disclosure explaining how the card can be cashed to the penny without incurring any fees.**

#### **E. THE BUREAU SHOULD CONSIDER A NEW RULEMAKING ON COMPULSORY USE PREPAID CARDS FOR JAILS AND PRISONS, AND IN THE ABSENCE OF A RULEMAKING EXERCISE ITS UDAAP ENFORCEMENT AUTHORITY.**

While we recognize that the proposed amendments are narrowly tailored to address specific concerns, we remain worried about the consumer harms regularly done by compulsory use

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*their bank account, or they can request a check be sent to them. The instructions for all three options are in the letter which is sent with the VISA card.”* AEP Ohio, Refunds & Security Deposits, <https://www.aepohio.com/account/service/SecurityDeposits.aspx>.

<sup>15</sup> The excessive fees for prison prepaid cards are well-documented and the subject of a number of lawsuits. *See, e.g.,* Arun Gupta, *The Financial Firm that Cornered the Market on Jails*, THE NATION, Aug. 1, 2016, available at <https://www.thenation.com/article/the-financial-firm-that-cornered-the-market-on-jails/>.

<sup>16</sup> Comments of the National Consumer Law Center to the Consumer Financial Protection Bureau at pp. 67-77, (March 23, 2015), available at [http://www.nclc.org/images/pdf/banking\\_and\\_payment\\_systems/nclc\\_prepaid\\_card\\_npr\\_comments-032315.pdf](http://www.nclc.org/images/pdf/banking_and_payment_systems/nclc_prepaid_card_npr_comments-032315.pdf).

cards, particularly for vulnerable consumers such as persons leaving prison or jail. Prepaid cards issued to the formerly incarcerated may be loaded with fees that eat up much needed funds. We therefore urge the Bureau to consider a separate rulemaking concerning prison financial services. In the absence of a new rulemaking, the Bureau should exercise its enforcement authority to address any unfair, deceptive, or abusive acts or practices in connection with financial products and services if necessary.<sup>17</sup>

#### **F. E-SIGN COMPLIANCE SHOULD BE REQUIRED FOR LONG FORM DISCLOSURES.**

We object to the proposal to permit issuers to provide the long form disclosure electronically, without complying with the E-Sign Act, if the form is not provided in the packaging and the issuer is not already mailing or delivering written communications. In those circumstances, some consumers may never receive the long form at all. Issuers have their choice of delivering the long form through one of three methods: in the package; by mail; or electronically if the consumer has consented and shown the ability to receive electronic communications. We object to using electronic communications for consumers who may have no ability to receive those communications.

Retail display j-hook space constraints are not a significant issue. Many prepaid cards that use j-hooks contain terms and conditions and other written information that can accommodate the long form disclosure.

We agree with the Bureau that there is no basis to waive the E-Sign requirements for accounts acquired by telephone. Those consumers can easily get the long form by mail along with their device or can consent to electronic communications.

#### **G. FOREIGN LANGUAGE REQUIREMENTS ARE IMPORTANT.**

We do not object to the narrow clarification that a payroll card issuer that uses a real-time oral language interpretation service need not make written disclosures available in every language for which oral interpretation is available.

We oppose any suggestion that payroll or government benefits cards might be excluded altogether from interpretation requirements. If employees or benefits recipients are being solicited in their language, then they should be able to get full information in that language.

#### **H. FEE INFORMATION SUBMITTED TO THE BUREAU SHOULD INCLUDE A SEPARATE FEE ADDENDUM.**

We have no objection to the proposal to permit issuers, when submitting fee information to the Bureau, to submit the short and long form disclosures as separate documents.

However, we urge the Bureau to require those fee disclosures each to be submitted separately from the full account agreements. It will be much easier to quickly find the fee information if those documents can be accessed separately and it is not necessary to read through an entire long set of terms and conditions.

We support proposed § 1005.19(b)(6)(iii), which requires submission of full agreements or fee information, not a series of changes in terms or riders, which are complicated to piece together.

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<sup>17</sup> 12 U.S.C. § 5531 (2012 & Supp. V).

## H. IMPLEMENTATION OF THE RULE SHOULD NOT BE FURTHER DELAYED.

Prepaid accounts are often marketed to consumers who cannot get, have trouble with, or choose not to have a traditional bank account, and tend to be used in greater numbers by younger and lower-income consumers. Millions of Americans have their wages and other income regularly loaded into prepaid card accounts, and prepaid cards are now widely used and relied upon by consumers for the same primary purpose: to manage ordinary household funds for purchases, bills and other necessities.

Our organizations have documented the unfair discrepancy between the protections afforded bank debit card users and prepaid card users for many years. In 2004, Consumers Union and National Consumer Law Center, as part of a national coalition, called for protections on “stored-value” cards, now called prepaid cards, which led to rule changes that extended protections to employer-arranged payroll cards in 2006.<sup>18</sup> In 2009, we issued a report, Prepaid Cards: Second-Tier Bank Account Substitutes.<sup>19</sup> We found that high, multiple and confusing fees were the norm and that consumers had little or no protection against fraud and loss. We are pleased that the final rule addresses these concerns, closing the gap in protections between bank account debit cards and prepaid cards.

The final prepaid card rule is a long-awaited step towards ensuring consumer access to safe financial products. Consumers have waited more than a decade for the critical legal protections the final prepaid rule ensures. The Bureau has taken a reasonable approach to the timeline for implementation, soliciting feedback and making accommodation where needed. There should be no more delays.

## CONCLUSION

We applaud the Bureau for its work in ensuring that prepaid accounts have strong protections under law. While we do not oppose the proposed amendments, we urge the Bureau to strengthen the consumer protections in the areas under review by ensuring that cards issued to known persons have error resolution rights, and enacting further protections for compulsory use prepaid accounts. Finally, we urge the Bureau to refuse any efforts to delay further the effective date of the rule. We thank you for this opportunity to comment, and look forward to working with the Bureau in the future on this issue.

Respectfully,

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<sup>18</sup> See, e.g., Letter from Consumers Union et al. to Jennifer Johnson, Secretary, Bd. of Governors, Fed. Reserve Sys. (Oct. 28, 2004), available at <http://consumersunion.org/wp-content/uploads/2013/04/payroll1004.pdf>.

<sup>19</sup> CONSUMERS UNION, CONSUMER FED’N OF AMERICA & NAT’L CONSUMER LAW CTR., PREPAID CARDS: SECOND-TIER BANK ACCOUNT SUBSTITUTES (2010), available at <https://consumersunion.org/pdf/2010PrepaidWP.pdf> (2009 report with fee updates conducted in 2010).



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