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April 5, 2017

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

Electronically submitted via <http://www.regulations.gov>

RE: Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date
Docket No. CFPB-2017-0008
RIN 3170-AA69

Dear Ms. Jackson:

PayPal, Inc. ("PayPal") is pleased to offer comments in response to the Proposed Rule and Request for Public Comment on Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) that was published by the Consumer Financial Protection Bureau (the "Bureau") in the Federal Register on March 15, 2017. 82 Fed. Reg. 13782 (March 15, 2017). In this letter, PayPal addresses the Bureau's request for public comment on whether the Bureau should extend the effective date of the Prepaid Rule, and if so, whether six months (from October 1, 2017 to April 1, 2018) is an appropriate length of time for such an extension.

I. Introduction and Recommendation

PayPal is a global company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We strive to increase our relevance for consumers and merchants to access and move their money anywhere in the world, anytime, on any platform and through any device. PayPal deeply respects the Bureau's mission to protect consumers by fostering their ability to make informed financial decisions free from undue pressure and based on clear disclosures and a thorough understanding of product offerings. We subscribe to the same philosophy and aim to

ensure that our existing and potential customers are fully aware of the benefits and possible risks of the products and services we provide.

PayPal thanks the Bureau for the opportunity to comment on a possible extension of the implementation date of the Prepaid Rule, and we support the Bureau's proposal to delay the Rule's effective date. We respectfully submit, however, that the deadline should be extended by at least twelve months if the Rule and accompanying commentary remain in their current form. The Rule and commentary as issued on October 5, 2016 will require PayPal to change the structure of its product offerings in fundamental ways and will likely create unintended adverse consequences for consumers. The two areas that would likely have the most negative effect on our consumers and create the most significant implementation burdens on PayPal are: (1) the broad definition of "arrangement" as it determines what constitutes a "business partner," which in turn determines what constitutes a covered separate credit feature subject to certain obligations and restrictions, including a 30-day waiting period; and (2) the blanket prohibition on negative balances for prepaid accounts that are linked to a covered separate credit feature. We address each of these topics and propose solutions to minimize the risk of negative consequences in more detail below.

Should the Bureau modify substantive provisions of the Rule in the manner we describe, we believe we could comply with the Rule within the six-month extension the Bureau is considering.

II. Challenges and Adverse Consequences Resulting from the Current Rule's 30-Day Waiting Period for Covered Separate Credit Features

PayPal offers consumers a digital wallet that connects into and leverages traditional payment networks (including ACH and debit and credit card networks), thereby enabling our customers to make and receive both personal and commercial payments in a safe, secure, efficient and cost-effective manner. Unlike most prepaid card users, PayPal consumers use our services primarily to access payment credentials rather than to access funds, as evidenced by the fact that in 2016, less than 6% of PayPal's U.S. consumer accounts held a balance in the first 30 days after account creation and nearly 100% of PayPal's United States-based consumer accounts are linked to at least one payment card or bank account as a funding source. The significance of linked cards as a funding source for purchases made through PayPal is further evidenced by the fact that the average PayPal account balance held by a consumer is approximately \$13.



Imposition of the 30-day Waiting Period

As currently written, the final Rule and commentary will impose a 30-day waiting period delaying a user's ability to link a credit card – even one acquired through channels completely independent of PayPal – if the issuer of that card has a business, marketing, or promotional arrangement with PayPal. These restrictions would reduce consumer choice and cause consumer confusion about the nature of PayPal's digital wallet and about the underlying funding sources that can be connected to the wallet. For example, in a scenario where PayPal has entered into a business arrangement with Issuer A but not Issuer B, a consumer could add Issuer B's credit card to their PayPal account immediately after opening a PayPal account but could not add Issuer A's credit card for a period of 30 days due to Issuer A's arrangement with PayPal.

The 30-day waiting period for offering and soliciting credit applies only to covered separate credit features. 12 C.F.R. § 1026.61(c). Section 1026.61(a)(2)(i) defines a "covered separate credit feature" as a separate credit feature that can be accessed by a hybrid prepaid-credit card. That section provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) the card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Section 1026.61(a)(5)(iii) defines "business partner" to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an "arrangement" with the prepaid account issuer or its affiliate. The term "arrangement" is not defined in the text of the rule itself, but the official commentary explains that an "arrangement" exists when either: (1) the prepaid account issuer or its affiliate has an agreement with the person that can extend credit or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers (however, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network); or (2) there is a business, marketing, or promotional agreement between the prepaid card issuer and the person that can extend credit and at the time



of the agreement, or at any time afterwards, the prepaid card can draw, transfer, or authorize the draw or transfer of credit from the credit feature.

The example in section 15.3.2 of the Bureau's Small Entity Compliance Guide for the Prepaid Rule, issued on January 31, 2017, highlights the significance of business partnerships on a prepaid account issuer's ability to extend credit within 30 days of an account opening. That example posits a prepaid card that can access two different separate credit features, one offered by the card issuer and the other offered by an entity that is neither the issuer, its affiliate, nor its business partner. The example explains that the prepaid card would be a hybrid prepaid-credit card with respect to the first credit feature, which would be a "covered separate credit feature," whereas the prepaid card would not be a hybrid prepaid-credit card with respect to the second credit feature, which would be a "non-covered separate credit feature."

Adverse Consequences to Consumers Resulting from Application of the Waiting Period

We urge the Bureau to reconsider the 30-day waiting period for linking to PayPal accounts credit cards issued by banks that have entered into a business, marketing, or promotional agreement with PayPal. We steadfastly believe that the concerns underlying the Bureau's decision to impose the waiting period are inapplicable to PayPal's digital wallet and that such a delay would likely lead to consumer confusion and a lack of options under the spirit of consumer choice.

In the commentary to the final rule, the Bureau cited the reasons for its imposition of the 30-day solicitation and access waiting period for credit cards offered by the prepaid card issuer, its affiliates, and business partners. In general terms, the Bureau announced that it "continue[d] to believe the 30-day waiting period would benefit consumers by separating the decisions to obtain and register the prepaid account from the decision to obtain a covered separate credit feature accessible by the hybrid prepaid-credit card," while noting that a longer period of 90 days "seems unnecessary to ensure that a consumer can make an informed decision regarding whether to link the account to a covered separate credit feature."¹ The Bureau posited that separating the decisions between opening a prepaid account and attaching a covered credit feature to the account may allow consumers "to focus more effectively on the credit terms of the covered separate credit feature, and make a more informed decision whether to request such a credit feature."² The Bureau further hypothesized that "[w]ithout the waiting period, consumers may feel pressured to decide whether to

¹ Page 1232 of the Prepaid Rule.

² Page 1234 of the Prepaid Rule.

add the covered separate credit feature without having the opportunity to fully consider the terms of the credit feature and the consequences of obtaining the credit feature.”³ Finally, the Bureau concluded that separating the decision to acquire a prepaid account from the decision to link a covered credit feature to the account “would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration, which may enable the consumer to better understand those terms and conditions”⁴ and “would help consumers to make more informed decisions regarding linking a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account.”⁵

Unlike general purpose reloadable cards and the vast majority of prepaid products the Bureau sought to cover under the new rule, a digital wallet is by its very nature a product designed to link credit card credentials for potential use whenever the wallet is employed. Our customers fully understand, appreciate, and are attracted to that inherent feature, as evidenced by the fact that approximately one third of PayPal’s U.S. consumer accounts are created during a merchant’s checkout flow, indicating the consumer’s strong desire to (1) create a PayPal account, (2) add a credit card, and (3) complete their purchase on the merchant’s site. The nature of our digital wallet is straightforward and there is little risk of confusion about how to use credit cards as a funding source for purchase transactions.

We respect the Bureau’s position that a cooling off period might help a customer make a deliberate decision about adding a collateral credit feature such as overdraft protection that cannot exist outside its connection to a traditional prepaid card. We believe, however, that a 30-day waiting period is unnecessary for an informed decision to link an existing credit card to a digital wallet because such linkage is exceptionally simple and is usually the key motivating factor for acquiring a digital wallet in the first place. Indeed, at the time a PayPal account is opened or within only a few days thereafter, a majority of consumers have decided to link an existing credit card to the account and understand the consequences of that action. Accordingly, imposition of a 30-day waiting period could frustrate consumers and have a material adverse effect on their willingness to open or subsequently use a digital wallet account.

Many of the protections the Bureau provides in the rule for consumers considering enrolling in overdraft protection or other collateral credit features are redundant or unnecessary for consumers who acquire traditional credit cards for use in digital wallets. Regulation Z already supplies a broad array of protections for credit card

³ *Id.*

⁴ *Id.*

⁵ Page 1235 of the Prepaid Rule.

customers by ensuring detailed disclosures, imposing ability-to-pay underwriting requirements, and providing numerous rights relating to the terms and use of such credit cards. PayPal expands on those rights by offering purchase protection, at no cost to the consumer, in cases where a buyer does not receive a purchased item from the seller or receives an item that is significantly different than described.

The Bureau appears to have acknowledged some of the above-described realities of how digital wallets operate by permitting the immediate linking of credit cards offered by unrelated issuers as long as the issuers do not have a business, marketing, or promotional agreement with the digital wallet provider. Hinging the applicability of the 30-day waiting period on whether such an agreement exists, however, does not appear to be warranted by any of the rationales voiced by the Bureau in support of the waiting period. From a consumer's perspective, the risks of linking and using a credit card acquired from an issuer that has no relationship with PayPal are identical in all material respects to the risks of linking and using a credit card acquired from an issuer that has a business agreement with PayPal. In fact, nothing in the Rule or accompanying commentary would prohibit the consumer from acquiring and using a "business partner" credit card outside of a PayPal account, even if jointly marketed by PayPal. Furthermore, prohibiting a consumer from linking a credit card issued by one of PayPal's "business partners" to a PayPal account would deprive the consumer of significant benefits, including convenience, purchase protection, free return shipping, and the ability to keep their credit card information from the view and possession of on-line merchants.

An inability to link credit cards issued by a "business partner" of PayPal will likely create confusion among its customers. Consumers seeking to link multiple credit cards to their PayPal accounts are unlikely to understand why they could link some of their credit cards but not others simply because of business, marketing, or promotional agreements between PayPal and the prohibited cards' issuers. This lack of freedom would be especially confusing in situations where a credit card subject to the 30-day waiting period was already owned by the consumer or was acquired independently of any PayPal marketing effort and without the consumer's knowledge of any business arrangement.

Additional consumer confusion is likely to arise from the long form pre-acquisition disclosure requirements set forth in the new rule's section 1005.18(b)(4)(vii), which mandates Schumer Box disclosures for all covered separate credit features. Such disclosures might be numerous depending on how many credit card issuer "business partners" PayPal has and how many credit cards are offered by each "business partner," and would have to be provided to all new PayPal account holders, even if



many of them never hold, apply for, or are even offered the credit cards issued by those “business partners.”

Proposed Amendment to Official Commentary

To avoid the problems and concerns highlighted above, we propose clarifying and limiting the definition of “arrangement” – and thereby limiting who is deemed a “business partner” and the scope of the term “covered separate credit feature” – to relationships that involve either: (1) a separate credit feature that provides overdraft protection to the asset account of a prepaid card, or (2) the integration of a separate credit feature of a type or in a manner that is not also offered by or available from a credit issuer or its affiliate that does not have an arrangement with the prepaid card issuer or its affiliate. As set forth below, such a limitation can be accomplished through the introduction of the term “linked credit,” which would be defined to include overdraft protection and unique credit features not offered by or available from credit issuers that have no relationship with a prepaid card issuer.

Specifically, we propose the following language, which highlights in bold the changes to the existing commentary:

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. *Arrangement.* A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature is a business partner of a prepaid account issuer where the person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate **to offer “linked credit.” For this purpose, “linked credit” means: (a) a separate credit feature that provides overdraft protection to the asset feature of a prepaid account, or (b) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid card issuer or its affiliate has no business, marketing, or promotional agreement.** A person (other than the prepaid account issuer or its affiliates) that can extend **linked** credit through a separate credit feature or the person’s affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of §1026.61(a)(5)(iii) if the circumstances in either paragraph i or ii are met:

- i. A person that can extend **linked** credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate has an agreement with the person that can extend **linked** credit

or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a **linked** credit feature offered by the person that can extend **linked** credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. However, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

ii. A person that can extend **linked** credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate:

A. Has a business, marketing, or promotional agreement or other arrangement with the person that can extend **linked** credit or its affiliate where the agreement or arrangement provides that:

1. Prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend **linked** credit; or
2. The **linked** credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and

B. At the time of the marketing agreement or arrangement described in comment 61(a)(5)(iii)-1.ii.A, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the **linked** credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement, as described in comment 61(a)(5)(iii) - 1.i, between the parties that the card can access the **linked** credit feature. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the **linked** credit feature is effectuated through a card network or payment network.

III. Challenges and Adverse Consequences Resulting from the Current Rule's Restrictions on Negative Balances

As currently structured, the Rule and official commentary permit negative balances in the asset feature of a prepaid account only if the requirements of section 1026.61(a)(4) are met. One of those requirements is that the prepaid card cannot access credit from a covered separate credit feature. As a result of this provision,



PayPal accounts would not be eligible to hold a negative balance when a customer links a credit card issued by a bank with which PayPal has a business, marketing or promotional agreement.⁶ In this case, negative balances that would otherwise be permitted under section 1026.61(a)(4)(ii), e.g., negative balances created by a delayed load cushion or a reversal of a provisional credit,⁷ are disallowed. Instead of treating these as negative balances in the normal course, the Rule requires PayPal to either (1) create a separate credit account or credit subaccount where the negative balance will be applied, or (2) apply the negative balance to the existing covered separate credit feature that is linked to the account.

Consumers are likely to become confused if PayPal is required to open a separate credit account or subaccount to their PayPal account to avoid a negative balance solely because the customer linked a “business partner” credit card to their PayPal account. Such confusion could arise from the receipt of certain Regulation Z disclosures and Card Act monthly statements that would be mandated for a separate credit account or subaccount. For PayPal, building systems to convert permissible negative balances to covered separate credit accounts when “business partner” credit cards are linked to PayPal accounts (and converting back if consumers subsequently remove such credit cards from their PayPal accounts) would be a major undertaking with no apparent consumer benefit. Indeed, even attempting to describe these conversions in a meaningful way to consumers would be quite challenging.

Rather than solely requiring the opening of a separate credit account or subaccount, the Rule permits PayPal to charge the covered separate credit feature to avoid an asset account balance going below zero. That charge, which would be made to the “business partner” credit card linked to a PayPal account, could lead to the imposition of interest and fees imposed by the issuer of the linked card, even though PayPal would not have imposed interest or fees had the Rule permitted the maintenance of a negative balance in the PayPal account. Charging a linked credit card to avoid a negative balance could be particularly confusing to customers who linked “business partner” credit cards to their PayPal accounts after they opened PayPal accounts, especially since their accounts were permitted to hold negative balances in the past.

To avoid the consumer harm and confusion and industry burdens described above, we propose that the CFPB amend the Rule and official commentary to permit negative balances when a covered separate credit feature is attached, as long as the prerequisites contained in section 1026.61(a)(4)(ii) are satisfied. Under our proposal, the prepaid card would continue to be a hybrid prepaid-credit card with respect to the attached covered separate credit feature but not with respect to the negative balance, at least when the policy and practice requirements and fee and charge limitations of subsections 1026.61(a)(4)(ii)(A) and (B) are satisfied. This dual nature is consistent

⁶ If the Bureau agrees to the commentary amendments we described above, the negative balance prohibition would apply whenever there is an arrangement to provide “linked credit” as we have proposed to define that term.

⁷ Off. Int. 61(a)(4)(ii)(A)-2,3.

with the concepts embodied in section 1026.61(a)(2)(ii), which provides, “A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in paragraph (a)(2)(i) of this section.”

IV. Conclusion

To avoid adverse consequences to consumers and reduce implementation burdens, PayPal urges the Bureau to modify the definition of “arrangement” in the official commentary and to amend the Rule and official commentary to permit negative balances that otherwise meet the prerequisites contained in Section 1026.61(a)(4) when covered separate credit features are attached to a prepaid account. Should the Bureau decline to make the substantive changes we propose, PayPal would likely need an extension of the implementation deadline by at least twelve months to make necessary changes to the fundamental structure of its product offerings. We appreciate the Bureau’s consideration of these proposed amendments. If you have any questions or would like to discuss any of the topics addressed in this letter, please do not hesitate to contact me.

Sincerely,

/s/ Jeffrey Levine

Jeffrey Levine
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August 11, 2017

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

Re: Request for Public Comment Regarding Amendments 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:

Financial Innovation Now (“FIN”)¹ appreciates the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (“Prepaid Rule”).²

FIN appreciates the willingness of the Bureau to consider changes to the prepaid rule and recognition that amendments are necessary to “facilitate compliance and relieve burden.”³ FIN again urges the Bureau to exempt from the short-form pre-acquisition disclosure requirements those digital wallets that are free to consumers. For free products, repeatedly disclosing “\$0” or “N/A,” risks consumer confusion and imposes substantial cost without a commensurate consumer benefit, or any benefit at all.

FIN urges the Bureau to extend the effective date of the Prepaid Rule to April 1, 2019.

FIN also reiterates that, in further considering the Prepaid Rule, the Bureau should be guided by the February 3, 2017, Presidential Executive Order on Core Principles for

¹ FIN is an alliance of technology leaders working to modernize the way consumers and businesses manage money and conduct commerce. We believe that technological transformation will make financial services more accessible, safe and affordable for everyone, and we promote policies that enable these innovations. Our member companies include Amazon, Apple, Google, Intuit and PayPal. For more information regarding FIN’s policy priorities and principles, please visit www.financialinnovationnow.org.

² 82 *Fed. Reg.* 29630 (June. 29, 2017). See also 81 *Fed. Reg.* 83,934 (November 22, 2016) (the final Prepaid Rule).

³ 82 *Fed. Reg.* at 29630.

Regulating the United States Financial System (“Executive Order”).⁴ The Executive Order sets forth core principles, including “mak[ing] regulation efficient, effective, and appropriately tailored,” “foster[ing] economic growth and vibrant financial markets,” and “restor[ing] public accountability within Federal financial regulatory agencies and rationaliz[ing] the Federal financial regulatory framework,” which FIN believes are principles that should guide the Bureau’s review of the Prepaid Rule.

* * *

The market for prepaid products and the market for new electronic payment products, more generally, is complex, diverse and rapidly evolving. The Federal Reserve Board studied the emerging electronic payment market years ago and concluded that the market was “evolving rapidly and was not yet ripe for regulation.”⁵ At that time the market was characterized as the market for stored value products, reflecting a belief at the time that the market was evolving in the direction of products where value would reside on the card itself instead of the card accessing bank balances as contemplated by the Prepaid Rule. We believe that the market for electronic payment products is evolving even more rapidly now than at the time of the Federal Reserve study and regulatory initiatives such as the Prepaid Rule should be narrowly crafted to avoid stifling continued innovation.

Recrafting the Prepaid Rule to avoid stifling innovation and “to facilitate compliance and relieve burden” will take time, both for the Bureau to consider the issues and craft appropriate changes and for any such changes to be implemented. Accordingly, FIN agrees that delay is “necessary and appropriate in light of the specific amendments”⁶ urges the Bureau to extend the effective date of the Prepaid Rule, to April 1, 2019.

With respect to digital wallets, the Bureau’s supplementary information issued with the Prepaid Rule specifically acknowledges this continuing market evolution.⁷ Accordingly, we urge the Bureau to give further consideration to, including by seeking public comment on, the treatment of digital wallets. As one example, digital wallets should at minimum be exempt from the rigid pre-acquisition disclosure requirements. Some form of these disclosure requirements may be appropriate in the context of a physical general purpose reloadable (“GPR”) card, but these requirements are a fundamental mismatch in the digital wallet context. The pre-acquisition disclosure requirements were developed primarily to enable consumers to comparison shop fees at the point of sale. In particular, the short-form

⁴ The Executive Order is available at <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states>.

⁵ 81 *Fed. Reg.* at 83,947. See also Bd. of Governors of the Fed. Reserve Sys., Report to Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products (Mar. 1997), available at http://www.federalreserve.gov/boarddocs/rptcongress/efta_rpt.pdf.

⁶ 82 *Fed. Reg.* at 29633.

⁷ 81 *Fed. Reg.* at 83,943 (stating that “[the Bureau] understands that payment processing by digital and mobile wallets is evolving quickly...”).

pre-acquisition disclosure is a rigid form that highlights fees that are relevant only to the GPR card context (e.g., ATM withdrawal fees).

As an initial matter, digital wallets generally do not charge the specific fees required to be disclosed on the short-form pre-acquisition disclosure. Therefore, the short-form pre-acquisition disclosure does not facilitate comparison shopping, because the fees required to be disclosed for digital wallet will generally be “\$0” or “N/A,” and comparing multiple products with indistinguishable fee disclosures does not serve the purpose of facilitating comparison shopping, and risks consumer confusion.

Moreover, the form and format of the short-form disclosure is relevant for purposes of a physical card and physical packaging, but not for a digital wallet. The form does not translate into the digital wallet context, notwithstanding the fact that the Bureau has attempted to translate “font size” to “pixel size” and permit responsive design. The constraints on the “real estate” for digital wallet disclosures are different constraints than for physical card and card packaging. Fundamentally, the short-form design does not translate to the digital context. Moreover, there is meaningful, demand-driven innovation to enable digital wallets on platforms other than mobile phones, including voice-enabled devices and wearables. The rigid form and format requirements under the Prepaid Rule simply do not translate to these products that are experiencing substantial consumer demand. Instead these rigid form and format requirements, contrary to the Executive Order on Core Principles, inhibit “economic growth” and a “vibrant financial market.”

If the Bureau determines that, notwithstanding the fundamental differences between digital wallets and GPR cards, the pre-acquisition disclosure regime should apply to these two different product types, FIN urges the Bureau to exempt from the short-form pre-acquisition disclosure requirements those digital wallets or GPR cards that are free to consumers. For free products, repeatedly disclosing “\$0” or “N/A,” risks consumer confusion and imposes substantial cost without a commensurate consumer benefit, or any benefit at all. Creating this exception does not impair a consumer’s ability to comparison shop, and better aligns with the Executive Order’s principle of “efficient, effective, and appropriately tailored” regulation.

* * *

FIN reiterates its support for the Bureau’s proposal to delay the effective date of the Prepaid Rule. Specifically, FIN urges the Bureau to extend the Prepaid Rule effective date to April 1, 2019, in order to ensure that the Bureau has sufficient opportunity to address open policy questions. At minimum, FIN urges the Bureau to recognize the difference between digital wallets and other prepaid cards, and specifically the incongruity of the pre-acquisition disclosure regime and the in-market reality of the characteristics of digital wallets and the manner of acquisition of such products. The Bureau’s failure to reconsider these points will impair innovation and does not meet the Executive Order’s aim to “foster economic growth and vibrant financial markets....”

FIN would be pleased to meet with the Bureau, at its convenience, or any other interested policymaker to discuss ways to tailor the Prepaid Rule, as it relates to digital wallets, to achieve “efficient, effective and appropriately tailored” regulation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Peters". The signature is fluid and cursive, with a large initial "B" and a stylized "Peters".

Brian Peters
Executive Director
Financial Innovation Now
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c: Hon. Steven Mnuchin, Chairman, Financial Stability Oversight Council
Members of the Financial Stability Oversight Council



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August 14, 2017

Ms. Monica Jackson
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Electronically submitted via <http://www.regulations.gov>

RE: Amendments 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
RIN 3170-AA72

Dear Ms. Jackson:

PayPal, Inc. is pleased to offer comments in response to the Proposed Rule and Request for Public Comment on Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) that was published by the Consumer Financial Protection Bureau in the Federal Register on June 29, 2017.¹ In this letter, PayPal addresses the Bureau's request for public comment on potential modifications to the rule's credit-related provisions applicable to digital wallets capable of storing funds and to the effective date of the rule.

I. Introduction and Recommendation

PayPal is a global company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We strive to empower consumers and merchants to access, receive, and move their money anywhere in the world, anytime, on any platform and through any device. PayPal deeply respects the Bureau's mission to protect consumers by fostering their abilities to make informed financial decisions free from undue pressure and based on clear disclosures and a thorough understanding of product offerings. We subscribe to the same philosophy and aim to

¹ 82 Fed. Reg. 29630 (June 29, 2017).

ensure that our existing and potential customers are fully aware of the benefits and possible risks of the products and services we provide.

PayPal appreciates the Bureau's recognition that parts of the final rule can be improved to expand customer choice, lessen customer confusion, and reduce unnecessary and unintended burdens on providers of digital wallets capable of storing funds. Specifically, PayPal is pleased by the Bureau's acknowledgement that the definition of "business partner" in § 1026.61(a)(5)(iii) and related commentary should be tailored to recognize the nature of digital wallets and the benefits consumers enjoy and expect when linking credit cards to such wallets. We also appreciate the extension of the implementation date from October 1, 2017 to April 1, 2018 announced in April, and we thank the Bureau for the opportunity to comment on the latest proposed amendments to the rule.

We respectfully assert, however, that the new proposed amendments insufficiently reduce risks of customer harm and do not lessen significant implementation hardships arising from the blanket prohibition on negative balances in digital wallet accounts that are linked to a covered separate credit feature. Accordingly, we are requesting that the Bureau strike § 1026.61(a)(4)(i) from the final rule, thereby permitting negative balances in hybrid prepaid-credit card accounts as long as the prerequisites currently set forth in § 1026.61(a)(4)(ii) are met. Further, we believe that the newly proposed exception to the rule's restrictions on business agreements relating to credit cards linked to digital wallets is unduly narrow and could stifle innovation likely to benefit consumers. As a result, we are requesting modifications to the proposed amendments currently under consideration, particularly with respect to the provisions in § 1026.61(a)(5)(iii)(D)(4) and (5). Finally, we submit that absent modifications to the proposed amendments, additional time will be necessary to comply with the rule, and we request a further extension of the implementation deadline to October 1, 2018.

II. Adverse Consumer Consequences and Implementation Challenges Resulting from Negative Balance Restrictions

As currently structured, the rule and official commentary permit negative balances in the asset feature of a prepaid account only if the requirements of both § 1026.61(a)(4)(i) and (ii) are met. Specifically, § 1026.61(a)(4)(i) effectively bars negative balances in any prepaid account that can access credit from a covered separate credit feature, while § 1026.61(a)(4)(ii) disallows negative balances in prepaid accounts unless the prepaid account issuer has an established policy and practice of declining to authorize transactions for which it reasonably believes the consumer has

insufficient or unavailable funds and does not impose certain fees or charges relating to negative balances.

As a result of § 1026.61(a)(4)(i), PayPal accounts are not eligible under the current rule to hold a negative balance whenever a customer links a credit card issued by a bank that falls within the definition of a business partner as provided in the proposed amendment at § 1026.61(a)(5)(iii). Rather, negative balances that would otherwise be permitted under § 1026.61(a)(4)(ii) – for example, negative balances created by a delayed load cushion or a reversal of a provisional credit – are disallowed in such cases. Instead of allowing these negative balances to be held in the normal course, the rule as promulgated requires PayPal either to create a separate credit account or credit subaccount where the negative balance will be applied or to apply the negative balance to an existing covered separate credit feature linked to the customer's PayPal account.

As PayPal previously explained in our comment letter of April 5, 2017, consumers are likely to become confused if PayPal opens separate credit accounts or subaccounts in their PayPal wallets to avoid negative balances in the asset feature of their PayPal account when a credit card issued by a business partner is linked. Such confusion will likely arise from the receipt of certain Regulation Z disclosures and Card Act monthly statements that would be mandated under the rule for separate credit accounts or subaccounts. Customers who previously incurred a negative balance in their PayPal account without any consequences when their wallet was linked only to credit cards issued by companies that were not PayPal business partners are unlikely to understand the procedures that would be imposed if and when they incur a negative balance in their PayPal account after linking a credit card issued by a business partner. Such confusion is likely to be heightened in cases where consumers acquire and link a credit card before any arrangement arises between PayPal and the card issuer or before the consumers become aware of a business arrangement between PayPal and the card issuer.

Building systems to hold otherwise permissible negative balances in separate subaccounts when business partner credit cards are linked (and converting back if consumers subsequently remove such credit cards from their PayPal accounts) would be a major technological and financial undertaking for PayPal and other digital wallet providers. In addition, providing credit subaccounts would give rise to a host of questions regarding applicable credit terms, procedures, and disclosures. Merely attempting to describe to consumers in a meaningful way the conversions of negative balances into credit subaccounts would be quite challenging.

While the rule as currently drafted permits PayPal to avoid the need to create separate subaccounts by charging a covered separate credit feature and thereby preventing an asset account balance from going below zero, such charges will not always be possible. For example, PayPal will not be able to apply the negative balance to a linked credit card when doing so would cause the card to exceed the credit limit set by the card issuer. Even when it is possible to charge the card, however, doing so likely would be financially detrimental to consumers. In particular, applying the negative balance to a linked credit card would likely be deemed a cash advance by the card issuer and subject the customer to interest and fees. Such a result would hardly be considered consumer-friendly, especially in light of the fact that PayPal would not have imposed interest or fees had the rule permitted the maintenance of a negative balance in the PayPal account.

The Bureau's most recent proposal to amend the rule acknowledges PayPal's earlier request to permit incidental credit to be provided via a negative balance in a prepaid account when a covered separate credit feature is connected to the account as long as the prerequisites contained in § 1026.61(a)(4)(ii) are satisfied.² Nonetheless, the Bureau is not proposing to include our requested amendment to the rule, citing the fact that other proposed amendments narrow the circumstances in which digital wallets would be considered hybrid prepaid-credit cards subject to the prohibition on negative balances set forth in § 1026.61(a)(4)(i) and based on a belief that when a digital wallet constitutes a hybrid prepaid-credit card, the prepaid account and credit card issuers can structure the terms of the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account.

PayPal disagrees with the Bureau's hypothesis that digital wallet providers and unaffiliated credit card issuers that fall within the Bureau's newly proposed definition of "business partner" can or will structure account terms to avoid or waive fees when incidental credit that would otherwise take the form of a negative balance in a digital wallet is instead converted to an extension of credit through a linked credit card. The Bureau cites no evidence that credit card issuers would willingly extend credit and waive interest and fees on the equivalent of cash advances to bring negative asset balances in digital wallets to zero, and we think it is overly optimistic to assume that credit card issuers would provide more charitable treatment regarding interest and fees for extensions of credit used to top off digital wallet balances than for extensions of credit used for other purposes. We believe it is much more likely that credit card issuers will impose interest and fees directly on their consumers for credit drawn to

² 82 Fed. Reg. at 29650.

avoid negative balances or will expect digital wallet providers to incur those costs on behalf of their customers .

In light of the existence of the protections in § 1026.61(a)(4)(ii) that impose limits on insufficiently funded transactions and prohibit certain interest and fees, we do not see or understand a need for a further prohibition based on whether there is a business arrangement between the prepaid card issuer and the linked credit card issuer, particularly given the adverse consumer consequences described above. In fact, several of the rationales provided by the Bureau for its absolute ban on negative balances in digital wallets linked to credit cards issued by business partners are wholly unrelated to the nature of the relationships between the issuers of prepaid accounts and the issuers of linked credit cards.

Setting forth one of the original rationales for the ban on negative balances for hybrid prepaid-credit cards, the Bureau emphasized a desire to “make it substantially easier for creditors and consumers alike to implement and understand credit accessible via a hybrid prepaid-credit card under a credit card regime.”³ The Bureau went on to say that “because hybrid prepaid-cards by their nature involve consumer assets as well as use of credit, bifurcating the asset feature from the credit feature makes application of the credit card rules more intuitive in a number of respects.”⁴ As an example, the Bureau mentioned that barring negative balances in asset accounts can help clarify the finance charges for the credit product. The Bureau also explained that bifurcating the asset feature from the credit feature “will make it easier to apply standard credit card requirements, such as periodic statements requirements.”⁵ None of these rationales turn on the existence of a business arrangement giving rise to a hybrid prepaid-card account, however, and such a relationship is irrelevant to a customer’s ability to understand the terms and consequences of an otherwise permissible negative asset balance in a digital wallet. Simply put, there is no material difference between the operation of a linked credit card issued by a PayPal business partner and the operation of a linked credit card in the same wallet issued by a non-business partner.

Given the high likelihood of adverse consequences arising from an absolute prohibition against negative balances in digital wallets linked to covered separate features and the significant protections already afforded to consumers in § 1026.61(a)(4)(ii), we respectfully request that the Bureau permit the use of negative

³ 81 Fed. Reg. 83934, 84264 (Nov. 22, 2016).

⁴ *Id.*

⁵ 81 Fed. Reg. at 84265.

balances in hybrid prepaid-credit card accounts by striking § 1026.61(a)(4)(i) from the rule.

III. Risks to Digital Wallet Innovation Arising from Deterrence of Certain Products and Business Relationships

In response to the initial prepaid rule published in the Federal Register in December 2014, PayPal submitted comments to the Bureau advocating that digital wallets should not fall within the definition of a “prepaid account.” Among other concerns, PayPal asserted that digital wallets capable of storing funds do not pose the risks of consumer harm the Bureau sought to target, particularly with respect to overdraft features and fee structures. We further explained that the application of restrictions primarily designed to address general purpose reloadable cards could stifle innovation in the digital and mobile payments space and impair the development of new, valuable products to engage consumers in our increasingly digital society.

While we appreciate the Bureau’s attempt to address PayPal’s concerns by creating certain exemptions to restrictions on offers or usage of credit cards linked to digital wallets, we respectfully assert that the Bureau’s latest proposed amendments are likely to chill innovation. Of particular concern are the prerequisites contained in proposed § 1026.61(a)(5)(iii)(D)(4) and (5) that prepaid account issuers and credit card issuers must apply the same terms, conditions, or features (or specified terms and conditions) of their products regardless of linked status to qualify for the exemption to the “arrangement” definition set forth in proposed § 1026.61(a)(5)(iii)(A) and thereby to avoid the 30-day waiting period and the negative balance restriction otherwise applicable to “business partners.” Requiring identical treatment for linked and non-linked products will limit digital wallet providers and credit card issuers’ abilities to offer consumer benefits that could take advantage of the synergies created by linked offerings.

It is difficult to predict exactly what future innovations might be inhibited and how synergies might be restricted as a result of the terms of § 1026.61(a)(5)(iii)(D)(4) and (5). One likely immediate effect, however, could arise from the mandate in proposed § 1026.61(a)(5)(iii)(D)(5) requiring credit card issuers to provide the same “specified terms and conditions,” including those relating to limitations on liability for unauthorized transactions, regardless of whether the card is linked to a digital wallet.⁶ Linkage of credit cards to a digital wallet containing a prepaid feature may enable access to more effective security and transaction monitoring features offered by the

⁶ See 82 Fed. Reg. 29630, 29654.

digital wallet provider. Given such heightened security, it is conceivable that a credit card issuer might be willing to extend greater protections to the cardholder based on linkage of their credit card to a digital wallet. The rule should not impose a roadblock to that kind of consumer-friendly innovation.

As another example, § 1026.61(a)(5)(iii)(D)(5) would not permit a credit card issuer to accept a payment originating from a cardholder's linked PayPal account if it does not permit a cardholder to make payments from a PayPal account when the credit card is not linked. Because designing and implementing systems to allow a credit card issuer to receive payments via PayPal can be costly and time-intensive, credit card issuers might be willing to accept payment via PayPal only from those customers who link their credit card to their PayPal account. Faced with the requirement that either all cardholders be given an opportunity to pay their credit card bill via PayPal or that no cardholders be offered that opportunity, the card issuer might decide not to provide the payment option to any customer. Such a decision would be detrimental to cardholders who want to link their cards to their PayPal account and pay their credit card bill using PayPal, but it would not provide any offsetting benefit to cardholders who do not want to link their cards to a PayPal account.

Ultimately, while the Bureau's proposed prerequisites for an exemption to the definition of "business partner" might make sense to address risks related to fees and overdraft features of traditional general purpose reloadable cards, PayPal respectfully asserts that the exemption is unduly narrow and fails to take into account all of the existing and potential benefits arising from the linkage of credit cards to digital wallets. We therefore request that the Bureau strike the prerequisites for an exemption to the definition of business partner set forth in § 1026.61(a)(5)(iii)(D)(4) and (5), at least with respect to digital wallets.

IV. Request for Extension of the Implementation Deadline

In the event the Bureau is not persuaded by the above arguments, PayPal respectfully requests an extension of the rule's April 1, 2018 effective date to permit PayPal and similarly situated prepaid account issuers additional time to design and implement product changes required to comply with the negative balance ban on hybrid prepaid - credit accounts.

As previously mentioned, constructing systems to convert permissible negative balances to separate credit subaccounts when a business partner's credit card is linked to a PayPal account (and converting back if the credit card is delinked from their PayPal account) would be a major undertaking. Such credit subaccounts would be



subject to virtually all of the various requirements and restrictions in Regulation Z for credit cards, including among other things: (i) providing credit card account opening disclosures; (ii) performing an ability-to-pay underwriting analysis prior to approving an account; (iii) providing monthly periodic statements at least twenty-one days before the payment due date; (iv) restricting PayPal's ability to use funds in a wallet balance to repay any negative balance owed to no more than once per month (subject to customer written consent); and (v) complying with § 1026.13 billing error resolution procedures.

Designing and implementing a system to automatically top off negative account balances through the charging of a linked covered separate credit feature would also be time consuming and would require resolution of complicated policy issues, including how to decide which credit feature to charge when multiple covered separate credit features are attached to the same prepaid account. In addition, implementing a system to avoid negative balances in asset accounts through the charging of linked credit cards would likely require collaboration and negotiation with business partners that issue credit cards linkable to PayPal's digital wallet.

PayPal has assessed the level of effort required to create separate subaccounts or to implement procedures to top off negative account balances through the charging of linked covered separate credit features. Based on the rule as it currently exists, PayPal would be unable to develop either option by April 1, 2018, even if such work were the only technology development priority of the company. According to our assessment, it would take a minimum of twelve months for PayPal to implement processes for creating compliant separate credit subaccounts for negative balances or for charging negative balances to a linked covered separate credit feature. As a result, PayPal respectfully requests an extension of the Rule's effective date to October 1, 2018 to implement the operational and technological changes necessary to comply with the negative balance ban for hybrid prepaid-credit accounts.

V. Conclusion

To avoid adverse consequences to consumers and reduce implementation burdens, PayPal urges the Bureau to strike § 1026.61(a)(4)(i) from the rule, eliminating the prohibition against creating negative balances on the asset feature of a hybrid prepaid-credit card for those negative balances that meet the requirements set forth in § 1026.61(a)(4)(ii). PayPal also requests modifications to the proposed amendments in § 1026.61(a)(5)(iii)(D)(4) and (5) to allow terms, conditions, or features of credit products to vary depending on whether they are linked to a digital wallet. Should the Bureau decline to make the substantive changes we propose,



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PayPal requests an extension of the implementation deadline by at least six more months, until October 1, 2018, to make necessary changes to implement the ban against negative balances for hybrid prepaid-credit cards.

We appreciate the Bureau's consideration of these proposed amendments. If you have any questions or would like to discuss any of the topics addressed in this letter, please do not hesitate to contact me.

Sincerely,

/s/ Jeffrey Levine

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August 14, 2017

VIA ELECTRONIC SUBMISSION

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

Re: Comments on Amendments 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

The Electronic Transactions Association (“ETA”) submits these comments in response to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) request for public comment on its proposal to amend rules concerning prepaid accounts under the Electronic Funds Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z). ETA appreciates the Bureau proposing additional substantive changes in response to compliance challenges raised by the industry. However, there remains a number of significant challenges yet to be addressed with the rule. As such, ETA makes recommendations on those specific issues below and encourages the Bureau to consider a longer extension of the rule’s effective date to April 1, 2019.

ETA is an international trade association representing more than 500 companies that offer electronic transaction processing products and services. ETA’s membership spans the breadth and scope of the payments industry and includes bank and nonbank providers of prepaid accounts, service providers that process prepaid account transactions, and other technology companies that are developing new mobile and digital payment options. Our members support the CFPB’s goal of establishing effective consumer protections for prepaid products and services, as well as promoting consumer choice, transparency, and fairness in the marketplace.

Prepaid products provide cost-effective, convenient, and innovative payment options for millions of consumers, particularly for the approximately 68 million lower-income and unbanked consumers who may not have access to other financial services. The popularity of prepaid products—particularly general purpose reloadable (“GPR”) cards—reflects the fact that these products provide consumers with a flexible and safe method for obtaining cash from an ATM, paying bills, and making online or everyday purchases. GPR cards, for example, are available in thousands of retail stores, bank branches, and other convenient locations across the country, including many neighborhoods that are not serviced by traditional bank branches or ATMs.

Accordingly, our comments seek to assist the Bureau in understanding the significant implementation challenges that the prepaid industry faces in complying with the rule’s requirements and why additional time (preferably until April 1, 2019) is still needed to meet these challenges. ETA encourages the Bureau to consider these issues while also protecting consumers, promoting innovation, and consumer access to new products and services.



COMMENTS

I. Specific Concerns With The Final Prepaid Rule

A. Challenges and Adverse Consequences Resulting from the Current Rule's 30-Day Waiting Period for Covered Separate Credit Features

ETA is generally supportive of the efforts of the Bureau's effort to address industry's concerns regarding linking credit cards to digital wallets. Specifically, the fix proposed by the Bureau to address hybrid prepaid-credit card requirements that would unduly burden a consumer's ability to link a digital wallet to traditional credit cards. However, there are significant issues, which remain outstanding regarding the imposition of the 30-day waiting period for covered separate credit features that are discussed, but not addressed, by the proposal.

As currently written, the final rule and commentary will impose a 30-day waiting period delaying a user's ability to link a credit card, if the issuer of that card has a business, marketing, or promotional arrangement with the digital wallet company. These restrictions would reduce consumer choice and cause consumer confusion about the nature of some digital wallets and about the underlying funding sources that can be connected to the wallet.

The Bureau's proposal would exclude arrangements between prepaid account issuers (including digital wallet providers) and credit card issuers from the definition of "business partner" and thus from hybrid prepaid-credit cards rules, if certain conditions are met. However, the CFPB states in a footnote, that "the Prepaid Accounts Rule's tailored protections, including the 30-day waiting period, are warranted in such cases and is not proposing to apply the exception where the prepaid account issuer or its affiliate is offering the credit card account."¹

We urge the Bureau to reconsider the 30-day waiting period for linking to mobile wallet accounts credit cards issued by the prepaid account issuer or its affiliate. We believe that the concerns underlying the Bureau's decision to impose the waiting period are inapplicable to most digital wallets and that such a delay would likely lead to consumer confusion and a lack of options under the spirit of consumer choice.

In the commentary to the final rule, the Bureau cited the reasons for its imposition of the 30-day solicitation and access-waiting period for credit cards offered by the prepaid card issuer, its affiliates, and business partners. In general terms, the Bureau announced that it "continue[d] to believe the 30-day waiting period would benefit consumers by separating the decisions to obtain and register the prepaid account from the decision to obtain a covered separate credit feature accessible by the hybrid prepaid-credit card," while noting that a longer period of 90 days "seems unnecessary to ensure that a consumer can make an informed decision regarding whether to link the account to a covered separate credit feature."² The Bureau posited that separating the decisions

¹ 28 Fed. Reg. 29650.

² 81 FR 83934 (Nov. 22, 2016).



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between opening a prepaid account and attaching a covered credit feature to the account may allow consumers “to focus more effectively on the credit terms of the covered separate credit feature, and make a more informed decision whether to request such a credit feature.”³ The Bureau further hypothesized that “[w]ithout the waiting period, consumers may feel pressured to decide whether to add the covered separate credit feature without having the opportunity to fully consider the terms of the credit feature and the consequences of obtaining the credit feature.”⁴ Finally, the Bureau concluded that separating the decision to acquire a prepaid account from the decision to link a covered credit feature to the account “would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration, which may enable the consumer to better understand those terms and conditions”⁵ and “would help consumers to make more informed decisions regarding linking a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account.”⁶

Unlike general-purpose reloadable cards and the vast majority of prepaid products the Bureau sought to cover under the new rule, a digital wallet is by its very nature a product designed to link credit card credentials for potential use whenever the wallet is employed. The nature of digital wallets are straightforward and there is little risk of confusion about how to use credit cards as a funding source for purchase transactions.

We respect the Bureau’s position that a cooling off period might help a customer make a deliberate decision about adding a collateral credit feature such as overdraft protection that cannot exist outside its connection to a traditional prepaid card. We believe, however, that a 30-day waiting period is unnecessary for an informed decision to link an existing credit card to a digital wallet because such linkage is exceptionally simple and is usually the key motivating factor for acquiring a digital wallet in the first place. Imposition of a 30-day waiting period could frustrate consumers and have a material adverse effect on their willingness to open or subsequently use a digital wallet account.

From a consumer’s perspective, the risks of linking and using a credit card acquired from an issuer that has no relationship with a digital wallet company are identical in all material respects to the risks of linking and using a credit card acquired from an issuer that has a business agreement with a digital wallet company, is the digital wallet company, or is an affiliate of the digital wallet company. Prohibiting a consumer from linking a credit card issued by one of a digital wallet company or affiliate to a digital wallet company account could deprive the consumer of significant benefits, including convenience, purchase protection, free return shipping, and the ability to keep their credit card information from the view and possession of on-line merchants.

An inability to link credit cards issued by a digital wallet company or its affiliates will likely create confusion among its customers. Consumers seeking to link multiple credit cards to their digital wallet accounts are unlikely to understand why they could link some of their credit

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*



cards but not others. This lack of freedom would be especially confusing in situations where a credit card subject to the 30-day waiting period was already owned by the consumer.

While the implementation challenge outlined by the Bureau is currently most relevant to certain “digital wallet” providers and their “business partners” today, the structural product features that give rise to that implementation challenge could apply to any prepaid account, regardless of how the financial institution decides to market the offering. We should expect that as prepaid accounts evolve and innovate, issuers will seek to offer additional funding sources that consumers could link, including credit cards and other future credit product innovations. Not all of those credit-based innovations will be provided by business partners, but rather could be provided by affiliates of or the prepaid account issuers themselves.

Additionally, while the 30-day waiting period represents an example of one of the most challenging requirements to comply with when a prepaid card becomes a hybrid, the exception should apply in full to business arrangements and affiliate issuers so long as all of the conditions are met.

B. Challenges and Adverse Consequences Resulting from the Current Rule’s Restrictions on Negative Balances

ETA appreciates the Bureau’s willingness to solicit comment on issues with the final rule related to incidental credit being provided via negative balance. In this proposed rule, the Bureau explains that it “believes that the proposed exception to the definition [of “business partner”] would address...concern by substantially narrowing the circumstances in which digital wallets would be likely to trigger ... Regulation Z requirements.”⁷ This change, while helpful in some cases, does not address the considerable challenges resulting from the restriction on negative balances and leaves in place a hurdle for innovation and cause of customer confusion. ETA believes that the Bureau should permit incidental credit to be provided via negative balance on a prepaid account even when a covered separate account feature is connected to the prepaid account.

As currently structured, the Rule and official commentary permit negative balances in the asset feature of a prepaid account only if the requirements of section 1026.61(a)(4) are met. One of those requirements is that the prepaid card cannot access credit from a covered separate credit feature. Because of this provision, some digital wallet accounts would not be eligible to hold a negative balance when a customer links a credit card issued by a bank with which the digital wallet company has a business, marketing or promotional agreement. In this case, negative balances that would otherwise be permitted under section 1026.61(a)(4)(ii), *e.g.*, negative balances created by a delayed load cushion or a reversal of a provisional credit, are disallowed. Instead of treating these as negative balances in the normal course, the final rule requires digital wallet companies to either (1) create a separate credit account or credit subaccount where the negative balance will be applied, or (2) apply the negative balance to the existing covered separate credit feature that is linked to the account.

⁷ 28 Fed. Reg. 29650.



Under the proposed exception from the definition of “business partner”, there are a number of instances where the exception would not apply because the business relationship does not meet all the requirements of the exception. In those cases, consumers are likely to become confused if digital wallet companies are required to open a separate credit account or subaccount to their digital wallet account to avoid a negative balance solely because the customer linked a “business partner” credit card to their digital wallet account. Such confusion could arise from the receipt of certain Regulation Z disclosures and Card Act monthly statements that would be mandated for a separate credit account or subaccount. For many digital wallet accounts, building systems to convert permissible negative balances to covered separate credit accounts when “business partner” credit cards are linked to digital wallet accounts (and converting back if consumers subsequently remove such credit cards from their digital wallet accounts) would be a major undertaking with no apparent consumer benefit. Indeed, even attempting to describe these conversions in a meaningful way to consumers would be quite challenging and ultimately cause significant customer confusion.

Rather than solely requiring the opening of a separate credit account or subaccount, the final rule permits digital wallet companies to charge the covered separate credit feature to avoid an asset account balance going below zero. That charge, which would be made to the “business partner” credit card linked to a digital wallet account, could lead to the imposition of interest and fees imposed by the issuer of the linked card, even though the digital wallet company would not have imposed interest or fees had the final rule permitted the maintenance of a negative balance in the digital wallet account. Charging a linked credit card to avoid a negative balance could be particularly confusing to customers who linked “business partner” credit cards to their digital wallet accounts after they opened digital wallet accounts, especially since their accounts were permitted to hold negative balances in the past.

To avoid the consumer harm and confusion and industry burdens described above, ETA proposes that the CFPB amend the rule and official commentary to permit negative balances when a covered separate credit feature is attached, as long as the prerequisites contained in section 1026.61(a)(4)(ii) are satisfied. Under this proposal, the prepaid card would continue to be a hybrid prepaid-credit card with respect to the attached covered separate credit feature but not with respect to the negative balance, at least when the policy and practice requirements and fee and charge limitations of subsections 1026.61(a)(4)(ii)(A) and (B) are satisfied.

To avoid adverse consequences to consumers and reduce implementation burdens, ETA urges the Bureau to amend the rule and official commentary to permit negative balances that otherwise meet the prerequisites contained in Section 1026.61(a)(4) when covered separate credit features are attached to a prepaid account.

C. Unverified Accounts

The proposal to revises § 1005.18(e)(3) of the Rule and related commentary to provide that, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution



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requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process.

For accounts where the consumer's identity is later verified, the proposal provides that financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification. ETA recommends that the Bureau consider a time limit on this "look back" period. Specifically, a period of thirty (30) days would likely capture the vast majority of customers who register their product and therefore have minimal consumer impact, but would greatly reduce the scope of challenges associated with investigating pre-verification claims. A longer period increases the potential for fraud-related losses because a financial institution's investigation of an error that occurred before the institution knows the identity of the customer is extremely difficult and that difficulty only increases as more time passes between the date of the disputed transaction or alleged error and registration, and it also increases the likelihood that a prepaid card was passed around to multiple individual users.

D. The Definition of the Term "Prepaid Account" Has the Potential to Limit the Development of New Products and Services.

ETA is concerned that the expansive, one-size-fits-all definition of the term "prepaid account" has the potential to chill innovation and stall the development of products and services. We therefore recommend that the Bureau focus on conventional GPR cards as was originally proposed by the Bureau in the advanced notice of proposed rulemaking.⁸ At a minimum, the definition of "prepaid account" should exclude digital wallets, virtual currencies, and person-to-person services, which are distinct from prepaid products.

The definition of "prepaid account" covers a wide-ranging group of products, including traditional plastic prepaid cards, GPR cards, payroll cards, government benefits cards, mobile and other electronic prepaid accounts, and peer-to-peer payment products. The definition establishes sweeping regulations for a variety of products and services that differ substantially in form and function.

Instead, the Bureau should take an incremental approach to defining prepaid accounts so that the definition tracks and responds to a dynamic market.⁹ Otherwise, the Bureau's rule will potentially stifle the development of new products or limit the expansion of new technologies that have been (or will be) introduced in the market, such as digital wallets, virtual currencies, and peer-to-peer payment systems.

E. Mobile products/digital wallets.

ETA recommends that mobile products and digital wallets not be grouped with "prepaid accounts." The mobile payments market is developing and, as the Bureau acknowledges, there are

⁸ 77 Fed. Reg. 30923 (May 24, 2012).

⁹ For example, The Financial Crimes Enforcement Network's prepaid access rule excludes certain non-reloadable products under \$1,000 in value.



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significant variations in how these products work. Rather than trying to predict the future of these products, the Bureau should take a flexible approach to tailor protections to fit consumers' uses of mobile payments. Moreover, consumer behavior and expectations differ when purchasing products or services online compared to in a retail store.¹⁰

Digital wallets and other mobile products were not studied in the Bureau's ANPR or review of the prepaid market. A rule originally intended for GPR cards and based on rules written for checking accounts and credit cards will not effectively protect consumers using digital wallets and other mobile products while still enabling development and expansion of consumer choice.

F. Person-to-person transfers.

ETA recommends that person-to-person ("P2P") products and services not be grouped with "prepaid accounts." These products are often used for consumer-to-consumer transactions and are different from GPR cards where most transactions directly include a business or financial institution. In addition, P2P products and services operate on a different technical basis, exchange different types of information, and involve different methods by which consumers obtain and activate P2P services compared to GPR cards.¹¹

For these reasons, P2P products do not present the same risks to consumers; therefore, it makes little sense to impose sweeping regulations designed for the GPR market on these developing products and services. Rather than combine P2P products with GPR cards and other prepaid accounts, the Bureau should provide specific, focused protections for well-established prepaid products and allow other areas to develop before imposing regulations.

G. The Bureau Should Reconsider the Ramifications of Requiring Prepaid Issuers to Post Agreements Online and with the Bureau.

ETA requests that the Bureau remove the rule's requirement that prepaid account agreements be posted online. The myriad types of prepaid products means that posting agreements online would present an overwhelming amount of information that would not be useful to consumers seeking to compare these products. Some products have numerous sub-types, which carry different agreements. ETA estimates that some prepaid issuers would be required to post thousands of agreements under the proposed rule. There is a wide variation in prepaid products and services. As the Bureau acknowledged in the NPRM, consumers can become overwhelmed when provided too much information. Moreover, consumers will be confronted with agreements associated with prepaid products that look similar but have different fee amounts or structures.

¹⁰ See FTC, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* 1 (Mar. 2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> ("The online universe presents a rewarding and fast-paced experience for consumers, but also raises interesting—and occasionally complex—questions about the applicability of laws that were developed long before 'dot com,' 'smartphone,' and 'social media' became household terms.")

¹¹ See Oz Shy, *Person-to-Person Electronic Funds Transfers: Recent Developments and Policy Issues*, Fed. Reserve Bank of Boston, No. 10-1, 5-6 & tbl.1 (Mar. 2, 2010).



This confusion poses the danger that consumers will develop mistaken beliefs about how a specific prepaid product functions or the extent and amount of fees.

Posting account agreements is also duplicative of the proposed disclosures because consumers already can compare products through the long form and short form disclosures. Since, as the Bureau acknowledged, substantially similar agreements may be offered with different fees, consumers viewing a prepaid product agreement on an issuer's website or the Bureau's web page will not always be able to make accurate comparisons regarding the products available to them. Online posting of prepaid account agreements will not facilitate consumers' analysis of the "costs, benefits, and risks" associated with accounts because of the wide variety and degree of variation in prepaid products.

The prepaid market is dynamic and competitive, which benefits consumers. The requirement to post agreements online will inhibit innovation and the incentive for companies to develop and deploy novel and evolving prepaid products, which in turn will reduce consumer choice. The public posting of account agreements would also reduce the value of novel product types. Competitors would quickly and easily be able to replicate each other's products, reducing competition. This would slow the development of the prepaid market, which is focused on providing new and distinct products. The Bureau's requirement to post agreements online would thus effectively create a standard form agreement, in contrast to the highly adaptable products that are currently available. The Bureau should not dictate the form of agreements, which may chill innovation and product development.

The rationale that agreements should be posted to help the Bureau monitor the market seems to be a heavy-handed approach for little to no benefit and risks a high degree of consumer confusion. The Bureau has more effective monitoring tools at its disposal, such as its consumer complaint database and its supervisory authority. These tools obviate the need to maintain a database of all prepaid product agreements.

H. The Rule Has the Potential to Limit Consumer Choice by Making Overdraft Inconvenient and Cost Prohibitive.

The final rule subjects prepaid products that offer overdraft features to the requirements of Regulation Z. This approach is at odds with the existing regulatory structure for similar overdraft features on products offered by banks on ATM cards and debit cards accessing a customer's deposit account, which allow for an optional, opt-in approach regulated under Regulation E.

ETA is concerned that the rules on overdraft protections and similar credit features will limit consumer access to these services. Such programs and features are often beneficial to consumers who cannot easily (or at all) access credit and have short-term liquidity needs. Taken together, the various restrictions on overdraft and credit, including compulsory use, ability to pay, offsets, time restrictions, and rate cap may discourage prepaid issuers from offering these services to consumers.



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In this regard, we note that the Bureau's cost-benefit analysis for the proposed rule did not include any data or studies addressing the potential impact of the proposed rules on consumer access to credit and overdraft services. We encourage the Bureau to analyze and address more fully the potential effect of increased regulatory burdens on the capability of companies to offer affordable and accessible products and services that meet the short-term liquidity needs of consumers. Any unanticipated consequences from the rule could harm consumers by reducing their field of choice in the market and denying them access to financial services.

Consumer comments on the NPRM indicated that many consumers value the option to have overdraft protection.¹² The Bureau's Fall 2014 Semi-Annual Report indicates that only one percent of the consumers' prepaid card complaints related to overdraft features.¹³ The rule therefore appears at odds with the lack of consumer complaints concerning overdraft services for prepaid products and the clear expression of need by many consumers for this feature. Consumers choose to opt-in to overdraft plans when they need or desire stability. Many of these consumers use prepaid products to avoid the higher costs associated with traditional bank accounts or because they cannot access traditional banking services. ETA encourages the Bureau to consider an opt-in approach to overdraft services consistent with existing rules and guidance on similar bank products.

II. The Industry Needs Additional Time to Implement the Sweeping Changes Required By This Rule

ETA appreciates that the Bureau recognizes the enormous compliance and implementation challenges brought by this rule. In doing so, the Bureau provided an extended general effective date to April 1, 2018, from October 1, 2017, a change of 6 months. ETA and its members expressed concern in our comments on the Notice of Proposed Rulemaking and the proposal for extension of the effective date for the final rule, that the rule does not provide prepaid account issuers, packaging manufacturers, and service providers sufficient time to prepare for and implement the sweeping changes brought on by this rule. As such, ETA had recommended that the general effective date be extended until October 1, 2018 in order to addressing the many practical and logistical challenges presented by the rule. However, the substantial undertaking of complying with the final rule mean that our member companies need more time. ETA urges the CFPB to extend the general effective date to April 1, 2019.

Manufacturing and Vendor Challenges for Physical Products

The final rule requires changes to prepaid card packaging and disclosures that present significant challenges. The new disclosure requirements will require prepaid issuers to revise

¹² See, e.g., Comments of Scott Kissinger, RIN 3170-AA22 (Mar. 10, 2015) ("I think the customer has a right to the overdraft protection if they desire. I [sic] really should be up to us."); Comments of Monica Matheny, RIN 3170-AA22 (Mar. 10, 2015) ("I choose to have the right to have the overdraft protection. It helps me and my family when things are sometimes short."); Comments of Mary Hicks, RIN 3170-AA22 (Mar. 9, 2015) ("I chose to have Overdraft Protection on my prepaid card. I believe I should have the right to choose to use services like Overdraft Protection.").

¹³ CFPB, *Semi-Annual Report of the Consumer Financial Protection Bureau* 43 fig.12 (Fall 2014).



internal workflows, approve new compliant products and packaging, work with manufacturers to build inventory, and advertise and market the new products. It takes a great deal of time to draft the materials required by the rule and have them reviewed by issuing banks. Additionally, there are only a limited number of suppliers in this space and these vendors support most of the market for prepaid providers who all face the same expedited timeline. The limited nature of the manufacturing capabilities required to produce prepaid cards will create a bottleneck as companies all try to update their products at the same time.

Given the unique nature of the j-hook packaging for prepaid cards and the changes required by the rule, a fundamental re-engineering of the packaging is necessary. The new short form disclosure takes up what is currently a magnetic strip or UPC code on the reverse side of packages. Now these elements will need to be moved to the front, requiring a re-tooling of the blister packages. In order to introduce the larger long form disclosure, the blister package must also be made thicker than current cards. These changes impede the ability to quickly manufacture compliant cards.

Compliance Challenges

ETA appreciates the Bureau including an exemption from the pull and replace requirement in the rule, but the prepaid card industry still has considerable concerns about continuing to sell products featuring noncompliant card holder agreements and packaging to consumers given recent enforcement actions taken by other federal regulators. Specifically, that sale of products with out-of-date card packaging may be considered deceptive or misleading in some cases. Continuing to sell prepaid card products with out-of-date card packaging and disclosures that no longer accurately describe how a card or product will work, could lead to confusion by consumers or open companies to potential Unfair, Deceptive, or Abusive Practice (“UDAP”) charges by the Federal Trade Commission (“FTC”) or similar legal action from state attorneys general. Extending the effective date by 6 months from the current effective date of April 1, 2018, to October 1, 2018, would allow prepaid card issuers, who decide to pull and replace current stock, to exhaust and replenish card inventory.

Additional Challenges

The following are just a few of the practical and logistical challenges presented by the rule that will require substantial time and effort to implement.

- The new regulations will require issuers to work with counsel to revise agreements to account for the new regulations.
- Issuers and their service providers will need to update computer systems and software to ensure that the required disclosures are available online, incorporated into telephone scripts, etc.
- The prepaid industry will need time to work with banks, lenders, and other related



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industries to coordinate in developing compliant products and services.

- The rules on error resolution and fraud protection may require some prepaid issuers to hire and train additional staff, which will require significant time and effort.
- Issuers that decide to offer overdraft and similar credit features will need to review their products and services for compliance with the Bureau's detailed regulations relating to compulsory use, credit issuance, ability to repay, and fee limitations.

Given these challenges, ETA respectfully requests an extension of the implementation timeline until April 1, 2019. This expanded timeline will provide the prepaid industry with sufficient time to comply with the rule without sacrificing quality or consumer access to products and services.

* * *

ETA appreciates the opportunity to comment on this important issue. Prepaid accounts provide secure, cost-effective, and flexible payment options for consumers, businesses, and federal, state, and local governments. We look forward to working with the Bureau to develop practical regulation that promotes consumer protection without limiting the ability of consumers to access these valuable products or increasing the cost of credit, especially for lower-income and unbanked consumers.

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or Scott Talbott at Stalbott@electran.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'PJ Hoffman', written in a cursive style.

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MEMORANDUM

DOCKET: Docket No. CFPB-2017-0015

SUBJECT: Summary of ex parte telephone conference with PayPal, Inc. regarding the CFPB's proposed Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)

DATE: September 1, 2017

PARTICIPANTS: PayPal, Inc. Participants – Daniel Schulman, Aaron Karczmer, and Jeffrey Levine

CFPB Participants – Richard Cordray, Kristine Andreassen, Jeff Swartz, Thomas Devlin, and Krista Ayoub

PREPARED BY: Jeffrey Levine

On September 1, 2017, representatives of PayPal, Inc. participated in a telephone conference with representatives of the Consumer Financial Protection Bureau to discuss the ban on negative balances in prepaid accounts set forth in 12 C.F.R § 1026.61.

After introductions, PayPal reiterated the concerns about the negative balance ban it communicated in its August 14, 2017 comment letter and specifically noted that the ban would run counter to the goals of avoiding customer confusion and fees arising from negative balances. During the call, PayPal noted that under the provisions of the prepaid rule, a negative balance can be held in a prepaid account only if three prerequisites are satisfied: (1) the prepaid account issuer has a policy of not authorizing transactions when there are insufficient funds to cover them; (2) no interest or fees are imposed as a result of the negative balance; and (3) the prepaid account cannot access credit from a covered separate credit feature. PayPal stated that it does not object to the first two prerequisites and that the company already complies with them. PayPal emphasized that its concern focused on the third prerequisite, relating to an attached covered separate credit feature. PayPal further shared the perspective that if the goal is protecting consumers from fees and interest charges arising from a negative balance in their account, whether that account is linked to a business partner credit card versus another credit card should not be an important factor. In addition, PayPal explained that the rule as currently drafted would require PayPal either to create a separate subaccount to hold a negative balance or to charge a linked credit card to avoid a negative balance whenever a covered separate credit feature is linked to the PayPal account. PayPal further explained how the creation of separate subaccounts would unduly confuse consumers and why charging linked covered separate credit features would likely result in costs to consumers that would not be incurred absent the rule's ban on negative balances. PayPal illustrated the harm and confusion that would result from the rule in its current form by presenting hypothetical examples. PayPal respectfully requested that

the CFPB consider removing the lack of an attached covered separate credit feature as a prerequisite to maintain a negative balance in a prepaid account.

At the end of the call, PayPal thanked the Bureau for the opportunity to explain its concerns about the negative balance ban and offered to provide any additional information the Bureau's staff might find helpful.