



Network Branded Prepaid Card Association

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April 5, 2017

Filed electronically at <http://www.regulations.gov>

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

Re: Comment Letter in Response to Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and Truth in Lending Act (Regulation Z); Delay of Effective Date [Docket No. CFPB–2017–0008]

Dear Ms. Jackson:

This letter is submitted on behalf of the Network Branded Prepaid Card Association (the "NBPCA")¹ in response to the Notice of Proposed Rulemaking with Request for Public Comment regarding Prepaid Accounts under the Electronic Funds Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), which was published by the Consumer Financial Protection Bureau ("CFPB") in the *Federal Register* on March 15, 2017, starting at page 13782 (the "Proposal"). The Proposal would extend the general effective date of the CFPB's final rule for prepaid accounts published in the *Federal Register* on Nov. 22, 2016 (the "Rule")² from Oct. 1, 2017 to April 1, 2018 (the "Extended Effective Date").

The NBPCA appreciates and supports the CFPB's decision to extend the effective date of the Rule. As the CFPB is aware, the Rule presents a number of significant compliance challenges to providers that would have made compliance by the original Oct. 1, 2017 effective date impracticable. The NBPCA believes an extension of the implementation period of the Rule will be beneficial not only to industry providers who will have more time to develop and implement processes and procedures to comply with the Rule's requirements, but also to consumers who will otherwise face disruption in the availability of prepaid products and services as a result of

¹ The NBPCA is a nonprofit, inter-industry trade association that supports the growth and success of network branded prepaid cards and represents the common interests of the many participants in this new and rapidly growing payments category. The NBPCA's members include banks and financial institutions, the major card networks, processors, program managers, marketing and incentive companies, card manufacturers, card distributors, payment industry consultants and law firms. The comments made in this letter do not necessarily represent the position of all members of the NBPCA.

² 81 Fed. Reg. 83934 et seq. (Nov. 22, 2016).



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providers being unable to meet the original October 1 date. However, for the reasons discussed in detail below, the NBPCA remains concerned that the technical and logistical challenges presented by the Rule will require more time for implementation than the additional 6-month period provided in the Proposal. Consequently, the NBPCA is requesting that the CFPB extend the implementation period of the Rule until Oct. 1, 2018.

In addition to requesting an additional extension of the Rule's effective date, we also wish to highlight certain substantive aspects of the Rule that we believe the CFPB should closely evaluate during the extended implementation period. We understand that the Proposal sought comment on the CFPB's decision to extend the effective date and not on policy decisions made in the Rule that industry or other stakeholders want the CFPB to reconsider. However, the CFPB also indicated that the additional time will enable it to more closely evaluate concerns raised by industry participants regarding aspects of the Rule that may have negative consequences for consumers and which were not anticipated or fully explained by commenters in response to the Notice of Proposed Rulemaking on Prepaid Accounts issued on December 23, 2014 (the "NPRM").³ As a result, the NBPCA believes that it is critically important to raise substantive issues to inform the CFPB's consideration of potential amendments to the Rule that could be included in a subsequent proposal to address the concerns of our members, which will ultimately benefit consumers.

Finally, the NBPCA notes that several providers have undertaken significant steps to comply with the requirements of the Rule by the original Oct. 1, 2017 deadline, and may be ready to comply with some components of the Rule prior to the Extended Effective Date. The NBPCA believes a safe harbor may be necessary to ensure these providers are not deemed to be out of compliance with the older provisions of Regulation E, such as those applicable to payroll and government benefit cards, simply by virtue of their compliance with the requirements of the Rule in advance of the Extended Effective Date. For example, there could be certain circumstances under which the time frames for consumer disputes in connection with government benefit cards under current Regulation E and the Prepaid Accounts rule may not be entirely aligned. The NBPCA's members have expressed concern that, by complying early with the modified Regulation E requirements in the Rule, the providers may face the risk of being deemed to be out of compliance with the older Regulation E requirements. For this reason, the NBPCA asks the CFPB to provide a safe harbor to those providers who choose to implement components of the Rule prior to the Extended Effective Date.

³ 79 Fed. Reg. 77102 et seq. (Dec 23, 2014).



I. For the Reasons Discussed Below, the NBPCA Believes the Challenges Presented by the Rule Require an Extended Implementation Period beyond the Six-Month Extension Included in the Proposal and the NBPCA therefore asks the CFPB to Extend the Effective Date of the Rule until Oct. 1, 2018

The Rule's Original Effective Date was based on the Belief that Providers would not have to Pull and Replace all Card Packaging and Materials on Retail Shelves

The most prevalent concern underscoring the need for an extended implementation period of one full year past the original Oct. 1, 2017 effective date is the fact that some industry participants with covered products on retail shelves may need to pull and replace card packaging and materials in advance of the Rule's effective date. The NBPCA notes that the CFPB took steps to address industry's concerns over the time necessary to pull and replace existing inventory on retail shelves by including an exemption in the Rule from the requirement to pull and replace non-compliant prepaid account packaging materials sold in retail locations for materials prepared in the normal course of business prior to Oct. 1, 2017.⁴ While the NBPCA and its members appreciate the CFPB's acknowledgement of the difficulty in and costs associated with replacing non-compliant card packaging and materials, the NBPCA nevertheless believes that, for a variety of reasons, many providers will still feel compelled to pull and replace card packaging, even under the Extended Effective Date.

For instance, many providers have expressed serious concern with continuing to sell prepaid products featuring noncompliant cardholder agreements or stale card packaging to consumers in light of recent enforcement actions taken by other federal regulators. In particular, providers have noted that the sale of prepaid products featuring outdated card packaging and materials may be considered deceptive or misleading to some consumers. The Rule will require substantial changes to cardholder agreements to accurately reflect the new protections and card features available to consumers in light of the Rule's requirements. If a provider sells a card with an outdated cardholder agreement (one not prepared in accordance with the requirements of the Rule), it is likely that a consumer may not be fully aware of the new protections or features applicable to their card. Moreover, the consumer will not receive an updated, accurate cardholder agreement until he/she actually registered his/her card, which means that in some cases a consumer may never receive an updated cardholder agreement at all.⁵ Additionally, in many instances the requirements of the Rule have led certain providers to fundamentally change the

⁴ 81 Fed. Reg. 84127 (Nov. 22, 2016).

⁵ The NBPCA has been told anecdotally by its members that up to 40% or even 50% of cardholders may never go through the CIP process to be able to reload a general purpose reloadable (GPR) card. In these instances, the cardholder will remain anonymous and the issuer will never be able to provide the cardholder with a valid cardholder agreement.



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characteristics and functionality of the prepaid products themselves. Continuing to sell prepaid card products with outdated card packaging and materials that no longer accurately describe how a card, or certain features or functionalities of the card, will work could lead to considerable consumer confusion. This unfavorable result for consumers should be avoided.

In addition to being detrimental to the interests of consumers, continuing to sell prepaid products with outdated or stale card packaging and cardholder agreements presents potentially significant legal and regulatory risks to providers. Specifically, the sale of such card products could be the basis of lawsuits against a provider brought by a consumer for breach of contract claims due to a cardholder agreement and packaging not accurately describing the features and functionality of a prepaid account. Another basis for a lawsuit against a provider is a claim that the cardholder agreement and card packaging create consumer confusion because the agreements and packaging do not accurately reflect the applicable features, functionality, and protections afforded to consumers by the Rule. Further, aside from exposing providers to possible litigation, including the risk of class-action litigation, utilizing outdated card packaging and cardholder agreements may lead to a potential Unfair, Deceptive, or Abusive Practice ("UDAP") charge and subsequent enforcement action being taken against providers by the Federal Trade Commission ("FTC") or similar legal action from state attorneys general.

As a result of these concerns, despite the inclusion of the exemption from the pull and replace requirement in the Rule and in spite of the cost associated with a full pull and replace strategy, some prepaid card issuers are deciding to simply remove their prepaid card products from the market rather than keep prepaid products on store shelves with noncompliant cardholder agreements and out-of-date packaging. This may still occur even if the CFPB provides the six-month extension that it has proposed. In light of this fact, providers who have decided that it is necessary to pull and replace card products, will need more time than what was originally provided under the Rule to exhaust and replenish card inventory. For this reason, the NBPCA asks the CFPB to extend the effective date by a full 12 months from the date originally included in the Rule, to Oct. 1, 2018.

The NBPCA stresses, however, that providers will still need the flexibility to sell-through prepaid card packaging prepared in the normal course of business prior to the effective date as there is no way to guarantee that 100% of outdated packaging materials sold in retail locations (or in inventory) will be pulled and replaced prior to the effective date of the Rule, regardless of the date chosen, and despite the best efforts of providers to make sure that it occurs. As a result of the fact that prepaid cards are sold at hundreds of thousands of locations across the US, there is a high probability that a very small percentage of non-compliant cards will remain on the shelves after the effective date of the Rule because, for example, a remote store location did not receive new prepaid card inventory in time or a retail employee did not complete his/her



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assigned task of removing and replacing the prepaid accounts subject to the rule or a retail employee erroneously pulled and replaced prepaid accounts not subject to the Rule and omitted those prepaid accounts that are subject to the Rule. These are just a few of the fact patterns that are sure to emerge as the industry uses its best efforts to comply with the Rule.

The Rule will Require Industry Participants to Engage in Extensive Platform Development and the Timing of Such Development will need to be staggered through the Prepaid Value Chain Requiring Additional Time to Comply

Another important reason the NBPCA believes an extension of the Rule's effective date until Oct. 1, 2018 is appropriate is the amount of platform development required for various providers in the prepaid value chain. For example, undergoing platform development by program managers in order to comply with the Rule's requirements with respect to providing expanded transaction histories and calculating monthly and annual fees for individual cardholders will, in and of itself, take several months past the original Oct. 1, 2017 effective date. This is especially true for those program managers that have built reporting interfaces on top of core processing platforms operated by a third party. In this scenario, the program manager cannot start its own development of the reporting tools necessary to comply with the Rule until after the core processors complete their development efforts. The NBPCA notes that core processors will have to undergo significant development initiatives to provide the new cardholder statement formats and to retain 24 months of cardholder data (rather than the 60 days currently required), which development will have to be performed for all programs and applications that house the data. For these reasons, an extended effective date of Oct. 1, 2018 is appropriate to ensure necessary platform development has time to be completed through the entire prepaid value chain.

Issuers will have to Conduct Bank Reviews of Numerous Program Documents, which, in the case of Large Third Party Issuers, may Encompass Thousands of Programs

Major logistical and technical issues with the Rule necessitate a longer implementation period. For example, we note that, in order to comply with the Rule, issuers, particularly large third party issuers, will need to review and approve various program documents for compliance. In particular, for each program that an issuer has, the issuer will need to review and approve multiple documents including cardholder agreements, card packaging, card carriers, FAQs, website materials, and marketing materials. In the case of large issuers, this may entail reviewing these documents for thousands of programs. Moreover, the NBPCA notes that there are a limited number of suppliers of card packaging and related materials for providers to use in complying with the Rule. Therefore, our members anticipate that the normal timelines for production and manufacturing will be at least doubled as the packaging providers attempt to supply the entire industry with updated packaging and materials at the same time.



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These concerns can be alleviated if the CFPB extends the effective date by a full year.

Other Logistical and Technical Issues will make Compliance with the Rule by the Proposal's April 1, 2018 Effective Date Impracticable

In addition to the concerns outlined above, a variety of other logistical and technical concerns could make complying with even the Extended Effective Date impracticable. Collectively, these reasons underscore the industry's need for additional time to comply with the requirements of the Rule. For example:

a. In the case of the Rule's requirement to submit cardholder agreements to the CFPB for posting, while the submission requirement does not begin until Oct. 1, 2018,⁶ the NBPCA notes that because some providers, particularly payroll providers with thousands of employers, will have thousands of agreements – in contrast to the vastly smaller number of credit card agreements submitted to the CFPB under Regulation Z today – there will be significant efforts on the part of issuers to develop an automated process to track each new cardholder agreement, and such tracking will likely need to begin as of the Extended Effective Date. In addition, providers will need to develop new processes to closely monitor program manager fee revenue generation in order to update short form disclosures. Even with development efforts underway, these processes will take significant time and effort on the part of providers to fully develop and implement.

b. In the case of larger providers, the logistical and technical difficulties described above may span across multiple product offerings, including (i) fee analysis by product type; (ii) preparing revised fee disclosures for each product type, as well as revisions to card packaging and terms and conditions; (iii) website changes for each product type, including fee disclosures, revised product descriptions, and revised FAQs; and (iv) and compliance with the ever-changing FTC "Dot Com Disclosure" guidance. For large third party issuers, many of these processes are controlled by program managers and subject to periodic audit by the issuers. As another example, the cash reload fee disclosure may be problematic for programs that utilize multiple third-party reload networks as in many cases, the network does not always set the reload fee charged to consumers. As a result, each participating reload location will have to be surveyed to determine the highest fee charged in order to meet the new disclosure requirement. With the increased compliance obligations under the Rule, providers will need additional time to develop new processes and procedures to control and track each piece of collateral – not just the cardholder agreements.

⁶ 81 Fed. Reg. 84338 (Nov. 22, 2016) (Rule Section 12 CFR § 1005.19(f)(2)).



c. It is important to keep in mind that all of the factors outlined above are exacerbated by the fact that the production of compliant card products will occur during the industry's ongoing transition to EMV compliant cards. Prepaid issuers are waiting in line behind credit and debit cards being produced by the finite number of card manufacturers and fulfillment companies in the United States.

II. Additional Substantive Issues with the Rule that NBPCA Urges the CFPB to Evaluate and Propose Appropriate Changes

While the Proposal states that the CFPB is not seeking comment generally on policy decisions made in the Rule that industry or other stakeholders might wish the CFPB to reconsider, the Proposal also notes that one reason for the CFPB's extension of the effective date is to allow it time to closely evaluate substantive concerns raised by industry that were not anticipated or fully explained in comments to the proposed rule and determine whether any additional adjustments to the Rule are appropriate. The NBPCA and its members reiterate that the time necessary for industry participants to comply with the Rule is closely linked to how certain issues presented by the Rule, including those discussed below, are ultimately resolved. Therefore, the NBPCA believes it is important to bring those issues to the CFPB's attention.

Extension of Regulation E's Limitation on Liability Provisions to Unregistered Cards

The Rule generally extends the Regulation E protections and limits on liability in cases of unauthorized use and errors to all covered prepaid accounts. Such coverage extends even to prepaid account products that are unregistered, and therefore anonymous, although issuers are not required to provide provisional crediting under Regulation E unless a consumer is registered and verified.⁷

The NBPCA has serious concerns with this aspect of the Rule. First and foremost among these concerns is the fact that extending Regulation E's limited liability provisions to unverified, anonymous products could potentially lead to a significant increase in fraud losses. These fraud loss increases would stem from difficulties experienced by financial institutions in investigating claims of unauthorized use or error in the case of unverified, anonymous accounts. It is unclear from the Rule how the CFPB expects issuers to investigate claims of unauthorized use in the case of an unverified, anonymous account. In its commentary accompanying the Rule, the CFPB indicates it believes that issuers today afford limited liability protections for unverified products.⁸

⁷ 81 Fed. Reg. 84335 (Nov. 22, 2016) (Rule Section 12 CFR § 1005.18(e)(3)).

⁸ However, the NBPCA notes that the zero liability policies of card networks typically exclude unregistered prepaid cards.



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Further, based on conversations with NBPCA members, most provide limitation of liability for unregistered prepaid cards on an exception basis, and only provide liability protections after a cardholder registers his/her card and passes identity verification procedures. The reason such protections are not generally offered for unverified accounts is simple – an issuer has few, if any, means of investigating allegations of unauthorized use made by anonymous cardholders. In a typical claim of unauthorized use, the card issuer will request a signed receipt or other evidence from a merchant and match it up to the cardholder and signature if the cardholder signed a merchant receipt. This process cannot be performed when the cardholder is unverified. Given this risk, the NBPCA believes that the likely impact of the Rule's extension of Regulation E's limitation of liability to unverified, anonymous accounts will be a significant increase in first-party fraud against issuers, as well as an increase in third party fraud as anyone with access to the card number and knowledge of transaction history can claim that he/she is the cardholder and request a refund for a disputed transaction. Such a result will ultimately harm consumers by forcing issuers to severely limit the features and functionality of unregistered products in order to prevent or mitigate significant fraud losses. Moreover, we note that the CFPB's proposed solution included in the Rule will not fix this problem. Specifically, we note that the fact that issuers are not required to provisionally credit unverified accounts would simply extend the period in which the issuer must pay the cardholder from 10-days to 45-days.

For these reasons, the NBPCA strongly urges the CFPB to take a second look at the extension of Regulation E's limitation of liability on unverified accounts during any extended implementation period.

Application of the Rule to Low Value, Non-Reloadable Prepaid Accounts such as Refund Cards, which are Simply a Means to Convert Cash or Check Payments to Prepaid Account-Based Payments

The NBPCA wishes to express its concerns about the extension of the Rule to various non-reloadable prepaid products, which are often used as a means of making one-time, low value payments that were previously made by cash or check. As expressed in our original comment letter, we strongly believe that these products should be excluded from the Rule or they risk elimination from the marketplace due to compliance costs exceeding the revenues generated from the product. One, but by no means the only, example is utility refund cards,⁹ which are often used to disburse refunds for services that have been paid in advance (e.g., paying for cable services at the start of the month before services are rendered) or to reimburse consumers for

⁹ Examples of utilities would include services such as power, natural gas, telephone, Internet, cell phone, satellite television and cable services. While the CFPB makes a reference to "refund cards" in the commentary accompanying the Rule, the CFPB appears to conflate these products with rebate cards and assumes they would therefore be exempt from coverage under the Rule. (See 81 Fed. Reg. 83977 (Nov. 22, 2016)).



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unused security deposits. These non-reloadable prepaid products are also used for a wide variety of other services such as reimbursement of real property lease security deposits, reimbursement of furniture lease security deposits, and compensation to doctors for completing surveys, to name just a few of the use cases. The NBPCA further notes that none of these products are properly characterized as loyalty, award, or promotional cards that would otherwise be excluded from the Rule as they are not issued in connection with a loyalty, award, or promotional program.

The NBPCA understands that the CFPB is concerned with certain non-reloadable products that may receive large amounts of money. In particular, the commentary to the Rule describes the CFPB's concerns with consumers receiving large tax refund deposits and large casualty insurance payments on non-reloadable prepaid cards, which the CFPB believes deserve the protections under the Rule. In reality, the vast majority of tax refund cards are structured as reloadable prepaid cards, and large deposits loaded onto non-reloadable prepaid cards for the payment of insurance proceeds can easily be protected under the Rule by including a dollar threshold over which Regulation E coverage would apply.

The NBPCA is concerned that if non-reloadable prepaid products, such as, but not limited to, the ones described above, are not exempted from the Rule, this fast-growing market segment may disappear, which would harm consumers by depriving them of a more convenient means of receiving such payments. In some cases, providers will face the additional compliance costs for providing pre-acquisition disclosures, requiring two mailings, and the new requirement, by virtue of being covered by Regulation E, to comply with the unsolicited issuance of access devices rules. This latter requirement would allow the consumer to reject payment by prepaid card and demand a paper check. Once all of these costs are absorbed by the prepaid issuer, the product will likely be offered at a loss, which in the long term is unsustainable.

Exclusions in the Rule for Healthcare and Employee Benefit Products Limited to Explicit Examples

Another issue the NBPCA urges the CFPB to evaluate during the extended implementation period is the apparent limitation of the applicability of the exemptions for healthcare and employee benefit products contained in the Rule to the explicit examples given by the CFPB. Specifically, the Rule provides that a "prepaid account" does not include an account "loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement."¹⁰ While the NBPCA agrees that it would be inappropriate to subject these employee benefit products to coverage under the Rule, the NBPCA is also concerned that by limiting the exclusion to the enumerated products, the CFPB may cause

¹⁰ 81 Fed. Reg. 84326 (Nov. 22, 2016) (Rule Section 1005.2(b)(3)(ii)(a)).



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other similar products to be deemed "prepaid accounts," subject to all of the requirements of the Rule. For example, consider 529 college and ABLE Act savings plans. Like an HSA, a 529 plan and an ABLE plan are tax-advantaged savings plans designed to encourage consumer savings that can be spent on certain "qualified expenses".¹¹ While these savings plans operate similarly to an HSA, under the current Rule, it appears that an account loaded only with funds from one of these listed programs would still qualify as a "prepaid account".¹² Such a result would be harmful to both industry and consumers because the increased compliance costs would make it difficult for providers to continue offering these products. As an alternative approach, the CFPB could adopt language excluding a particular category of product and then provide a non-exhaustive list of products that would be exempt under this product type.

Ambiguity of the Application of the Rule to Accounts Marketed or Labeled as Prepaid to Certain Products

As part of its definition of a "prepaid account" the Rule includes accounts that are "marketed or labeled as "prepaid" and that are "redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines."¹³ The NBPCA is concerned that this definition creates ambiguities with respect to the application of the rule to certain products. For example, consider a gift card that is denoted (both on the packaging and on the plastic itself) as "gift" and is usable at multiple, unaffiliated merchants for goods or services. Presumably, this product would be considered "marketed and labeled as a gift card" and thus carved out under Section 1005.2(b)(ii)(D)(4) of the Rule.¹⁴ However, many providers offer these products in retail stores as part of a display broadly labeled as "prepaid" in order to ensure that other non-gift products would not be subject to the federal Gift Card Rule. The NBPCA is concerned, however, that this approach could potentially now lead to the opposite result: that including the product within a display labeled "prepaid" may be considered to be marketing gift cards as "prepaid," rather than as "gift," which would subject the once excluded gift card product to the requirements of the Rule.

¹¹ In the case of 529 Plans, qualified expenses include qualified tuition expenses, whereas in the case of ABLE plans, qualified expenses relate to qualified disability expenses.

¹² It is worth noting that, in the case of ABLE Act savings plans, while the federal law allowing for these tax-advantaged plans was passed in 2014, because the plans are state enabled, we are only just now seeing them adopted by the states. These plans are thus a good example of a product that did not exist at the time the CFPB was preparing its Rule, but nevertheless would greatly benefit from inclusion in the exceptions from the Rule provided by the CFPB.

¹³ 81 Fed. Reg. 84326 (Nov. 22, 2016) (Rule Section 1005.2(b)(3)(i)(C)).

¹⁴ 81 Fed. Reg. 84326 (Nov. 22, 2016).



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Similarly, we urge you to consider the impact of the Rule's "marketing" test on reload packs. The NBPCA understands that because the primary function of a "reload pack" is not to conduct transactions person-to-person, at ATMs, or with multiple unaffiliated merchants, these products would generally not be covered under the Rule. However, similar to the open-loop gift card example above, many providers sell reload packs in retail stores in displays broadly labeled as "prepaid". Further, many reload products can be used with multiple unaffiliated program managers / issuers to load a prepaid account. It is easy to envision a scenario where a regulator takes a broad interpretation of the phrase "redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines" to conclude that reload packs usable at multiple, unaffiliated program managers or issuers for the "service" of reloading a prepaid account, and sold under displays labeled as "prepaid" are subject to the Rule.

The NBPCA does not believe that the CFPB intended either of the above mentioned products to be covered under the Rule solely due to the "marketing" test and therefore urges the CFPB to evaluate whether additional clarification under the Rule is needed to ensure these and similarly situated products remain excluded. The NBPCA suggests it would be helpful if the CFPB would clarify that products included in such retail displays broadly labeled as "prepaid" are not, for that reason alone, considered to be "marketed" as "prepaid" for purposes of the Rule. Otherwise, the CFPB risks harming consumers by potentially inadvertently subjecting such products to the Rule, making it economically infeasible to continue offering them to consumers.

Requirement to Provide Written Copy of Long-Form Disclosure when it has already been provided via Electronic Access

The Rule allows providers to give the required pre-acquisition disclosures electronically whenever an account is acquired through the internet or a mobile device. When an account is not acquired online or through a mobile device, however, financial institutions are still required to comply with the E-Sign Act in order to provide the required disclosures electronically.¹⁵ Notably for purposes of this letter, this would include situations where a consumer acquires an account at a retail location. In that case, rather than provide both the long and short-form disclosures pre-acquisition, providers are allowed to provide access to the long-form disclosure either via telephone or the internet.¹⁶ However, once a consumer acquires the prepaid account, providers are then required to provide the long-form disclosure to the consumer a second time, which will often require a separate mailing.¹⁷

¹⁵ 81 Fed. Reg. 83965 (Nov. 22, 2016).

¹⁶ 81 Fed. Reg. 84328 (Nov. 22, 2016) (Rule Section 1005.18(b)(1)(ii)).

¹⁷ 81 Fed. Reg. 84328 (Nov. 22, 2016) (Rule Section 1005.18(b)(1)(ii)).



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The NBPCA does not believe it makes sense to require providers to give the long-form disclosure to a consumer in writing when the consumer has already been provided access to the same disclosure via the internet. The NBPCA believes this requirement is unnecessary given the current technological landscape where a great majority of American consumers have access to the internet through either a mobile device, a computer, or via free access at their local library. Consequently, the NBPCA does not believe issuers should have to bear the expense of providing a second copy of the long-form to a consumer, in writing, in situations where the consumer has already been given access to the long-form via the internet. This requirement will only increase costs which will eventually be passed to consumers in the form of higher prices. The NBPCA would support, however, an option to send a copy of the long-form to cardholders, upon request, in cases where they are unable to print a copy. The NBPCA urges the CFPB to re-evaluate this requirement during the extended implementation period.

Overdraft Features Offered in Connection with a Prepaid Account

Similar to the proposed rule, the Rule amends Regulation E and Regulation Z to regulate overdraft credit features offered in connection with prepaid accounts, treating such features as open-end (not home secured) credit.¹⁸ Such treatment is markedly different from how the same types of features are treated when they are offered in conjunction with a debit card connected to a traditional checking account. The NBPCA continues to believe that there is no compelling reason for treating similar bank products differently, and for providing disfavored treatment to the one product that is designed to provide access to financial services for low and moderate income consumers who might not otherwise have access to a traditional bank account. On its face, it appears that the Rule attempts to treat consumers who, by their own volition, have affirmatively selected to use a prepaid card to access their money, much differently than consumers who have decided to open a traditional bank account with an associated debit card. Accordingly, it seems that prepaid card users do not have the same flexibility to choose the bank features that meet their specific needs like their debit card counterparts. This is particularly troubling considering that the limitations on such features included in the Rule hinge on the access device selected by the consumer when they open their bank account. If not revisited, the Rule in its current form will make it impracticable for prepaid card providers to continue offering prepaid card features that take advantage of the full range of the card's potential as demanded by consumers.

¹⁸ 81 Fed. Reg. 84160–62 (Nov. 22, 2016). The NBPCA would also like to thank the CFPB for its attention to the "force-pay" transaction issue we raised in our comment letter to the CFPB's proposed rule, dated March 23, 2015. The treatment of "force-pay" transactions under the CFPB's proposed rule was of great concern to industry providers and the NBPCA greatly appreciates that the CFPB's understanding and willingness to work with industry to resolve that concern.



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The NBPCA understands that, at one time, the CFPB intended to promulgate new rules for providing overdraft or credit features for traditional checking accounts. However, these proposed rules have not been issued and, until they are, the end result of the Rule's requirements is a system where there are two broad classes of consumer asset accounts: (i) traditional checking accounts, which are primarily available to middle and upper income consumers who can pass certain bank checks,¹⁹ and who will be offered the benefits of overdraft protection; and (ii) prepaid accounts, which are available to low and moderate income consumers who cannot pass the necessary bank checks needed to open a traditional checking account, and those consumers who, for a myriad of reasons, choose not to hold a traditional checking account, and who will not be afforded the benefits of overdraft protection. In other words, the consumers who may need access to overdraft features the most are the very consumers who will be blocked from receiving overdraft protection. The NBPCA reiterates its position that it does not believe there is a compelling reason for this disparate treatment and the NBPCA hopes the CFPB will evaluate its requirements for offering credit features in connection with prepaid accounts during the extended implementation period.

III. Conclusion

The NBPCA appreciates the opportunity to provide its comments to the CFPB on its Proposal. The NBPCA supports extending the effective date of the Rule and feels such an extension would be beneficial to both prepaid account providers as well as consumers. However, the NBPCA believes that the substantial technical and compliance challenges presented by the Rule will require additional time beyond what was included in the Proposal in order for the prepaid industry to comply. For this reason, the NBPCA urges the CFPB to extend the effective date of the Rule until Oct. 1, 2018, while providing a safe harbor for those issuers that choose to implement components of the Rule ahead the effective date. Finally, the NBPCA believes there are substantive aspects of the Rule that may have unintended negative consequences for consumers and which were not anticipated or fully explained by commenters in response to the NPRM. The NBPCA has identified some of those issues in this letter and hopes to work with the CFPB to further evaluate these issues during the extended implementation period.

¹⁹ In particular, banks will typically engage third party servicers to conduct checks on individuals seeking to open a traditional bank account that are intended to determine if an applicant has bounced checks in the past and will therefore pose a risk to the bank.



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We appreciate your consideration of these important concerns and remain available to answer any questions you have regarding the issues discussed herein.

Sincerely,

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