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March 23, 2015

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

RE: Notice of Proposed Rulemaking and Request for Comment on Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (RIN 3170-AA22)

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I write to you regarding the proposed amendments to Prepaid Accounts under the *Electronic Fund Transfer Act* (Regulation E) and the *Truth in Lending Act* (Regulation Z). *See* 79 FR 77101 (December 23, 2014). The proposal constitutes an important step in adequately informing consumers of their rights and responsibilities when using prepaid accounts. However, as discussed in detail in this comment letter, NAFCU cannot support aspects of these amendments as proposed.

General Comments

NAFCU supports the Bureau's efforts to ensure that consumers using prepaid products are sufficiently informed and protected. Credit unions consistently strive to provide their memberships with the sort of information useful to determining which products best fit the consumers' individual financial needs and goals. Open dialogue on this issue is critical to ensuring prepaid products remain available to consumers and with the features, such as overdraft protection, that consumers demand.

It should be noted the Federal Reserve Board (FRB) previously considered including prepaid products within the scope of Regulation E, but concluded that "consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements and error resolution rights would be quite significant for the issuer." *See* 71 Fed. Reg. 1473, 1475 (Jan. 10, 2006). Despite the FRB's doubts about the propriety of applying Regulation E to prepaid products, the Consumer Financial

Protection Bureau (CFPB) has decided to move forward on this issue. The proposed amendments, as they stand, raise serious concerns about the future of prepaid products and the impact that will be felt by small financial institutions as they attempt to comply with costly and complex regulatory requirements. NAFCU believes that the Bureau should aim to find an appropriate balance between adequately protecting consumers and allowing consumers to access the products they demand.

Share Insurance

In May 2012, the CFPB issued an Advance Notice of Proposed Rulemaking (ANPR) seeking input on a number of topics, including requiring National Credit Union Share Insurance Fund (NCUSIF) pass-through share insurance on prepaid products. NAFCU engaged with the CFPB following the ANPR and strongly pushed against setting NCUSIF share insurance as a requirement for prepaid cards. NAFCU advocated that such a requirement would put credit union issuers at a competitive disadvantage relative to bank and nonbank issuers because of credit unions' field of membership restrictions. The current proposal does not make share insurance a requirement to offer prepaid products but does require that a credit union to disclose when a prepaid product is not constructed to be eligible for NCUSIF pass-through share insurance.

NAFCU is pleased to see that the current proposal does not make share insurance a requirement to offer prepaid cards. Further, NAFCU commends the CFPB for recognizing the competitive disadvantage credit unions would have been subjected to if share insurance had been required. NAFCU believes the CFPB produces a stronger, healthier financial system when the concerns of credit unions are acknowledged and allowed to help shape the regulatory landscape. Accordingly, NAFCU strongly supports this aspect of the proposal, and encourages the Bureau to retain it in any final rulemaking.

Disclosure Requirements

The CFPB seeks to amend the definition of "account" in Regulation E, which establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems, to include prepaid accounts. Prepaid accounts, under the CFPB's proposed rule, would include any traditional plastic prepaid cards, general-purpose reloadable cards, payroll cards, and government benefits cards. Therefore, under the proposed rule, Regulation E's consumer protections would be applied to prepaid cards and mandate new disclosures among a laundry list of other requirements.

NAFCU has long supported providing consumers with useful information about the products they chose to utilize. However, NAFCU remains concerned with the extensive content that would be required within the "short form" disclosure.

"Short Form" Content

The proposed rule would require credit unions to provide disclosures in both "short form" and "long form" *prior* to the consumer acquiring the prepaid product. If specific conditions are met,

the long form may be provided *after* the consumer has acquired the product. Generally, the short form would set forth fees that must be disclosed for all prepaid account products, even if the fee is \$0 or if they relate to features not offered for a particular product. Among the fees required on the short form include: 1) periodic fees, 2) per purchase fees, 3) ATM withdrawal fees, 4) cash-reload fees, 5) ATM balance inquiry fees, 6) customer service fees, 7) inactivity fees, and 8) incidence-based fee disclosures. In addition, the proposed rule requires, where applicable: 1) a payroll card account notice, 2) overdraft services and credit feature information, 3) where to obtain the long form disclosure, 4) product registration information, 5) Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF) information, and 6) a link to the CFPB website. Finally, a credit union may be required to disclose the highest fee it could impose and how the consumer could minimize the amount of that fee.

NAFCU appreciates the CFPB's attempt to develop disclosure requirements that adequately inform the consumer prior to the purchase of a prepaid product. Such information is vital to providing prospective consumers with an opportunity to shop around and compare that particular product to other products, prepaid or otherwise. However, NAFCU has concerns about the overwhelming amount of information the proposed rule mandates to be provided in the so-called "short form" disclosure.

The proposal suggests that, given the option for the long form disclosure to be provided post-purchase under certain circumstances, the short form disclosure is intended to be the consumers' most valuable and understandable source of product information pre-purchase. In spite of this objective, the CFPB proposes to require such an overwhelming amount of detail in the short form disclosure that its usefulness to the consumer becomes questionable. It is intuitive that flooding the consumer with information can be just as harmful as providing the consumer with no information at all. In a 2014 academic study of consumer attention to fine print, researchers concluded that "a regulatory approach focusing on shortening and simplifying online contracts, standardizing their terms, and providing a standardized summary is more likely to increase readership than an approach focusing on mandating disclosure." See "Does Anyone Read the Fine Print?" *NYU* (2014).

In light of this concern, NAFCU recommends that the amount of detail required in the short form with respect to the fees be condensed and simplified specifically to not include "incidence-based" fees. The inclusion of "incidence-based" fees on a disclosure intended to be critical to the consumers' protection will cause the text to become overly complex and unhelpful to the consumer, as fee types will vary based on the issuer's fee strategy and the actual fees charged.

Periodic Statements

In addition to disclosures, the Bureau's proposal would apply Regulation E's periodic statement requirement to prepaid accounts. Regulation E, as it stands, generally requires financial institutions to provide members with a periodic statement for each monthly cycle in which an electronic fund transfer occurred or, if there are no such transfers, a periodic statement at least quarterly. The proposal permits financial institutions to discharge the periodic statement requirement by providing consumers with (1) their prepaid balance by telephone *and* (2) 18

months of transaction history either electronically or online *or* 18 months of transaction history in writing upon request.

Currently, a credit union may choose to provide access for a certain time period worth of periodic statements based on factors such as available data storage, member demand, and the capabilities of their online system provider. However, transaction history is not the type of data customarily held by some financial institutions. The CFPB's November 2014 *Study of Prepaid Account Agreements* revealed the majority of prepaid programs only retain transaction history for 60 days or less. In contrast to savings or checking accounts, which are typically held by the consumer for longer periods of time, prepaid products are generally viewed as disposable or short-term products. In order to track transaction history, many institutions will be required to commission costly system upgrades and develop new programming in order to provide an 18 month transaction/fee history. Many credit unions' online system provider may not even be able to perform such an upgrade. It is likely that the cost of upgrading and developing new systems to comply with the proposed regulation would force some credit unions to choose between paying for these upgrades in a manner that raises costs on consumers or entirely stop providing prepaid products in general.

NAFCU opposes the required periodic statement component of the proposal because we believe it imposes unnecessary recordkeeping burdens on credit unions. The CFPB has attempted to carve out a reasonable alternative to Regulation E's periodic statement requirement but the "alternative" is assuredly just as burdensome as requiring the financial institution to furnish periodic statements, leaving credit unions with few options.

For credit unions fortunate enough to have the ability to upgrade their system or with a transaction history system already in place, NAFCU is concerned that the length of transaction history required to be retained is excessive. As stated above and noted in surveys of our member credit unions, prepaid products typically have a short life expectancy. Recognizing the high cost and brevity of prepaid products, if periodic statements are to be required at all, NAFCU proposes the duration of transaction history required to be available be set at a maximum of 6-12 months.

Overdraft Protection

Under current regulations, overdraft services on traditional deposit accounts are expressly excluded from Regulation Z's requirements for open-end credit through the operation of the definitions of "creditor" and "finance charge." However, the proposed rule redefines a "credit card account" and "finance charges" to include overdraft charges and credit fees associated with prepaid accounts. The proposed definitions function to extend coverage of Regulation Z to issuers of prepaid cards with overdraft services when fees are charged for such services. In particular, under the proposed rule, prepaid accounts with overdraft features will be subject to Regulation Z's ability-to-pay provisions and fee limitations. The CFPB believes that "overdraft lines of credit, overdraft services, and similar features offered in connection with a prepaid account satisfy the definitions of (1) credit; (2) open-end credit plan; and (3) credit cards under TILA and Regulation Z." Thus, the CFPB's proposed rule treats overdraft services accessed by a prepaid card as "open-end credit" under Regulation Z.

NAFCU has significant concerns about the potential for unintended consequences to credit unions based on the proposed changes to the definition of “finance charge.” The *Federal Credit Union Act* (FCUA) imposes a statutory limit on the interest rate credit unions may charge. Currently, National Credit Union Administration (NCUA) regulations establish an 18 percent ceiling on interest rates that may be charged by federal credit unions, inclusive of all finance charges. 12 C.F.R. § 701.21(c)(7). When evaluating whether a particular fee or charge is a “finance charge,” NCUA has traditionally looked to the federal regulator with authority over Regulation Z. NAFCU believes that, if the CFPB moves forward with this proposal, the changes might prove problematic given this reliance by NCUA. Specifically, if the CFPB’s proposed definition of finance charge is finalized, this will impact credit unions’ interest/fee calculations for prepaid products and might result in credit unions being unable to offer the existing products and services that consumers are accustomed to and demand. Accordingly, NAFCU does not believe it is appropriate to treat overdraft services offered on prepaid accounts as open-end credit.

De Minimis Exception

The proposal provides for a de minimis exception from the requirement to submit prepaid account agreements to the Bureau. A credit union would not be required to submit prepaid account agreements if they have fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter. As in Regulation Z, this de minimis exception would apply to all open prepaid accounts of the issuer, not to each of the issuer's prepaid account programs separately.

While the currently proposed exception is a step in the right direction, NAFCU recommends that the exception be raised to 10,000 open prepaid accounts. The market for prepaid accounts is dynamic and growing, overregulating prepaid products at the outset may negatively affect that progress. A higher ceiling provides small credit unions the opportunity to continue to provide a valuable service to their members while recognizing the popularity of prepaid products.

Temporary Suspension of the Submission of Credit Card Agreements (RIN 3170-AA50)

In other developments, the CFPB has recently proposed a one-year suspension of card issuer’s obligations to submit credit card agreements to the Bureau for posting on the CFPB website. The CFPB acknowledges that this proposal seeks to “reduce burden while the Bureau works to develop a more streamlined and automated submission system.” The current prepaid accounts proposal would require credit unions to submit to the Bureau their prepaid account agreements as well. Therefore, the prepaid accounts proposal would hinge on the deployment of the streamlined submission mechanism the CFPB has tasked itself to design.

NAFCU will be submitting a separate comment letter on the suspension proposal but believes that the CFPB’s agreement submission mechanism should be thoroughly “worked out” before any final rule on prepaid accounts is promulgated or effective.

Consumer Financial Protection Bureau

March 23, 2015

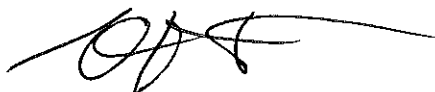
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Conclusion

Credit unions want to continue to provide useful information and protection to consumers on the products consumers overwhelmingly demand, but the proposal as-is only adds to the problem of overregulation of the credit unions industry. There must be an appropriate balance of consumer education on the products they utilize with straight-forward regulation that allows credit unions to continue to provide those products. NAFCU and our members, therefore, urge the Bureau to address the potential compliance costs and regulatory difficulties faced by credits unions raised in this letter.

NAFCU appreciated the opportunity to share its thoughts on the proposed amendments to Regulation E's and Z's relationship to prepaid products and would like to discuss this matter further. Should you have any questions or concerns, please feel free to contact me at amonterrubio@nafcu.org or (703) 842-2244.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM', with a long horizontal flourish extending to the right.

Alexander Monterrubio
Regulatory Affairs Counsel