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**Submitted Electronically**

**August 14, 2017**

Ms. Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1275 First Street NE  
Washington, DC 20002

Re: Request for 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:

The Independent Community Bankers of America<sup>1</sup> (ICBA) appreciates the opportunity to comment on a proposal by the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) regarding amendments to rules concerning prepaid accounts under Regulation E which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, and the official interpretations to those regulations (“Proposal” or “proposal”).

Specifically, the proposal amends provisions of the Bureau’s Final Prepaid Rule (“Final Rule”) released in November 2016 governing: error resolution and limitations on liability for prepaid accounts that have not undergone a consumer identification and verification

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<sup>1</sup> The Independent Community Bankers of America®, the nation’s voice for more than 5,800 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations, nationwide, community banks employ 760,000 Americans, hold \$4.7 trillion in assets, \$3.7 trillion in deposits, and \$3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA’s website at [www.icba.org](http://www.icba.org).

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process; application of the Final Rule's credit-related provisions to digital wallets; clarifications for prepaid account disclosures and agreements; and, the effective date.

## **ICBA Position**

ICBA supports many of the proposed changes – that if finalized – will clarify a number of ambiguities and provide meaningful regulatory burden relief for community banks.

In summary, ICBA:

- supports removal of error resolution provisions and liability limitations for most prepaid accounts that have not undergone a consumer identification and verification process;
- does not support the retroactive application of error resolution and liability limitations once a consumer completes the prepaid account verification process;
- opposes the limited exception to the credit-related provisions of the rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers offering traditional credit card products;
- supports revisions clarifying the timing requirements for delivery of pre-acquisition disclosures;
- supports the provision allowing financial institutions to provide long-form disclosures (associated with prepaid cards acquired at retail establishments) electronically, without fulfilling E-Sign Act requirements;
- supports submission of prepaid account agreements to CFPB on an annual basis;
- urges the complete exclusion of payroll and government benefit accounts from foreign language disclosure requirements; and,
- strongly urges the CFPB to delay the effective date until January 1, 2020.

## **Error Resolution and Limitations on Liability**

The CFPB is proposing to revise error resolution and limited liability provisions of the Final Rule to no longer require institutions to resolve errors or limit consumers' liability on prepaid accounts (other than payroll cards or government benefit accounts) that have not undergone a consumer identification and verification process.

ICBA welcomes and supports this proposed modification to reduce regulatory burden and views the undertaking of error resolution and limiting liability on unverified prepaid accounts as impractical and pointless because the identity of the account holder is unknown; making error resolution investigations unnecessarily difficult due to a financial institution's inability to determine a legitimate account holder versus a potential fraudster. Additionally, application of the provision, under these circumstances, could be counterproductive due to the likely increase in fraudulent claims by savvy consumers taking advantage of an institution's duty to comply.

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Further, for smaller institutions, such as community banks, requiring the counterproductive application of error resolution on unverified accounts is overly burdensome, and could result in financial institutions limiting account functionality until verification is complete, or worse, discontinuing accounts altogether which further places consumers with the greatest need at a disadvantage. ICBA favors a proposal that will allow financial institutions to avoid the perils of this cumbersome task and supports the exclusion of unregistered prepaid accounts from the Final Rule's liability and error resolution provisions.

However, ICBA does not support the proposal's provision that would require financial institutions to apply error resolution and limited liability provisions, pursuant to timing requirements of the Final Rule, to errors that occurred prior to verification, once a consumer decides to undergo the verification process. The retroactive nature of this proposed revision will undoubtedly prevent some institutions from meeting the regulation's timing requirements; potentially deeming those institutions, non-compliant. Finally, a consumer should not be rewarded for their failure to register a prepaid account that is the subject of an error resolution event.

### **Credit Card Accounts Linked to Prepaid Accounts**

The CFPB is proposing to create a limited exception to the credit-related provisions of the rule in Reg Z for certain business arrangements between prepaid account issuers and credit card issuers offering traditional credit card products. Specifically, the CFPB is proposing to amend the definition of "business partner" and the related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Final Rule's tailored provisions applicable to hybrid prepaid-credit cards, if the following conditions are met:

- (1) The credit card account is unaffiliated with the prepaid account.
- (2) The prepaid account issuer and the credit card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time during authorizing, settling, or otherwise completing transactions.
- (3) The prepaid account issuer and the credit card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card.
- (4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid account to the credit card account.
- (5) The credit card issuer applies the same specified terms and conditions to the credit card.

Under this proposed exception, the linked credit card account would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (non home-secured) consumer credit plan, but the tailored provisions in the Final Rule governing hybrid prepaid-credit cards would not apply.

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ICBA opposes this provision of the Proposal as it discriminates between unaffiliated and affiliated providers of prepaid accounts and credit cards, and creates an unlevel playing field.

Under the Proposal, digital wallets that are issued by nonbanks would receive an exemption while digital wallets issued/supported by banks may not. ICBA strongly asserts that all prepaid accounts with linked credit cards should be treated equally in the Final Rule and urges the Bureau to make the appropriate modifications to establish this equitable treatment.

### **Pre-acquisition disclosure requirements**

The CFPB is proposing revisions to clarify the timing requirements for delivery of pre-acquisition disclosures. As currently written, the final rule requires issuers to provide disclosures before a consumer acquires a prepaid account. The proposal addresses situations wherein prepaid accounts are issued to consumers, not at their request, and the financial institution offers no other alternatives to access those funds. Requiring disclosures to be sent prior to or separately, under these circumstances, offers no consumer benefit or protection. Conversely, such a requirement may potentially harm the consumer by delaying access to those funds.

ICBA agrees with CFPB's proposal to remove any doubt that it requires any "additional separate formal step" to ensure delivery of pre-acquisition disclosures where consumers are not making a choice to acquire the prepaid account. As such, ICBA supports adding clarifying language that states when a prepaid account is used for disbursing funds to a consumer and the financial institution does not offer any alternative means for the consumer to receive those funds, disclosures may be provided at the time the consumer receives the prepaid account.

### **Disclosures for Prepaid Accounts Acquired in Retail Locations**

The CFPB is proposing a revision to the Final Rule that will eliminate the increased cost associated with the form, formatting, and packaging requirements on prepaid cards acquired at retail locations. Specially, the revision will allow financial institutions that do not provide the long-form disclosure inside the prepaid account packaging material and is not mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information to may provide the long-form disclosure in electronic form without regard to the consumer notice and consent requirements of the E-Sign Act.

ICBA strongly supports this proposed revision and views it as a win for community banks that (or may in the future) issue prepaid cards at retail locations because this revision removes the cost, man-power, and burden of complying with the rule as currently written.

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## **Submission of prepaid account agreements to CFPB**

The CFPB is proposing to revise the requirement that financial institutions submit prepaid account agreements each time there is a change to the agreement to the Bureau. The current rule requires financial institutions to submit amended agreements within 30 calendar days after making any change, including changes that are not substantive as to the content of the agreement, and changes as small as to a change in parties to the agreement. This proposed revision would allow financial institutions to delay the submission when the change pertains to the names of relevant parties to the agreement until such time as the issuer is submitting an amended agreement. ICBA supports this revision as it will alleviate the burdensome and time-consuming exercise of submitting non-substantive account agreement changes.

In response to the CFPB's request for comment on alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that information about other relevant parties is submitted in a timely manner, ICBA recommends annual submissions. In our comment letter dated, May 23, 2015, we argued that "providing account agreements on a quarterly basis to the CFPB is burdensome to prepaid card issuers and not helpful to consumers."<sup>2</sup> In that same letter, ICBA noted the CFPB's opinion during its proposed rulemaking on credit card agreements, that its process was "unnecessarily cumbersome for issuers and may make issuers' own internal tracking of previously submitted agreements difficult."<sup>3</sup> ICBA's position remains the same. Annual submissions will not only reduce the burden, but is consistent with regulatory submission/filing mandates required by other agencies. Further, changes to the names of relevant parties (to an otherwise substantively unchanged agreement) has been acknowledged by the CFPB as a frequent occurrence; as such, annual submissions will reduce institutions becoming bogged down tracking frequent name changes to agreements and allow the CFPB to reconcile the burden it has acknowledged.

## **Foreign Language Disclosures**

The CFPB is proposing an exception to its rule requiring that a financial institution provide pre-acquisition disclosures in a foreign language if it uses that same language relating to the acquisition of a prepaid account. The proposed exception is in response to: employers and government agencies that use third-party interpretation services when facilitating administrative processes which may include the acquisition of a prepaid account; the difficulty third parties may have interpreting disclosures in real-time; and the lack of experience some interpretation services may have with financial institution disclosures.

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<sup>2</sup> Proposed Rule Regarding Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) [Docket No. CFPB-2014-0031 and RIN 3170-AA22]

<sup>3</sup> 80 Fed. Reg. 10418 (Feb. 26, 2015).

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Specifically, the CFPB requests whether it should exempt payroll card and government benefit accounts where the foreign language is offered by real-time telephone language interpretation service provided by a third-party. Alternatively, the CFPB seeks comments on whether it should completely exclude both types of accounts from the foreign disclosure requirement altogether.

By and large, community banks are simply not suited to finance, implement, manage, and guarantee a third party's ability to accurately interpret and provide real-time financial disclosures pertaining to prepaid accounts. While ICBA appreciates the Bureau proposing a narrow exception to the requirement, it does not eliminate the obstacles associated with financial institutions still having to provide foreign disclosures to payroll and government benefit account holders, regardless of who delivers them. As such, ICBA strongly urges the complete exclusion of both types of accounts from the requirement to provide foreign disclosures for the same reasons the CFPB lists to support this proposed revision. ICBA views the complete exclusion of this requirement as the only meaningful action for the CFPB to address what it acknowledges as a burden.

### **Delay**

ICBA strongly urges the CFPB to further delay the rule's effective date until January 1, 2020 as we believe this would be necessary for the agency to comprehensively address the concerns raised in the proposal and in order for affected entities to adapt to, incorporate, and implement any changes resulting from this proposal.

### **Conclusion**

ICBA appreciates the Bureau responding to the regulatory burden and other implementation concerns expressed by the industry, and we appreciate the opportunity to comment on the Bureau's proposed modifications to address these concerns. If you have any questions or would like additional information, please contact Rhonda Thomas-Whitley at [Rhonda.Thomas-Whitley@icba.org](mailto:Rhonda.Thomas-Whitley@icba.org) or 202-659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley  
Assistant Vice President & Regulatory Counsel

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