



March 23, 2015

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

**Re: Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (Docket No. CFPB–2014–0031, RIN 3170-AA22)**

Ladies and Gentlemen:

The Online Lenders Alliance (“OLA”) respectfully submits this comment letter in response to the Consumer Financial Protection Bureau’s (“Bureau’s”) notice of proposed rulemaking (“NPRM”) for Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z).<sup>1</sup>

The OLA represents the online consumer short-term lending and related products and services industry. Our members include online lenders, as well as vendors and service providers to lenders, such as consumer reporting agencies and lead generators. The OLA and its members support the adoption of strong consumer protections for the prepaid industry based on principles of consumer choice, transparency, and access to financial products and services. In this spirit, the OLA and its member companies have agreed to Best Practices and a Code of Conduct that goes beyond compliance with existing legal requirements to ensure that consumers are fully informed and fairly treated when using short-term lending products.<sup>2</sup>

While the OLA supports the Bureau’s mission to promote consumer protections in the prepaid market, we are concerned that the scope and breadth of the NPRM has the potential to stifle innovation and limit consumer access to these important financial products and services. In particular, we are concerned that the proposed rules on overdraft and credit features would effectively make offering these services in connection with prepaid accounts cost-prohibitive or inconvenient for consumers. This would have a significant adverse impact on the millions of unbanked and underbanked consumers in the United States who value these services in connection with prepaid accounts.

An important aspect of the Bureau’s statutory mission is to facilitate consumer access to financial products by promoting innovation and competition in the market.<sup>3</sup> This aspect of the

---

<sup>1</sup> 79 Fed. Reg. 77102 (proposed Dec. 23, 2014) [hereinafter NPRM].

<sup>2</sup> OLA, Best Practices, <http://www.onlinelendersalliance.org/?page=BestPractices>.

<sup>3</sup> 12 U.S.C. § 5511.



Bureau's mission is especially critical for unbanked and underbanked consumers, who often have less access to financial products and services. Accordingly, our comments below seek to assist the Bureau in developing common-sense regulations that preserve consumer access to credit while protecting consumers by requiring prepaid accounts and related services to be marketed in a transparent and understandable manner.

## **THE OLA'S COMMENTS TO THE PROPOSED RULE**

Prepaid accounts provide cost-effective and flexible payment options for consumers, particularly the millions of consumers who lack access to a bank account or credit card.<sup>4</sup> The growth of prepaid accounts over the past several years reflects the fact that consumers value the convenience and flexibility of prepaid accounts. And, as the popularity of prepaid accounts has grown, the industry has responded with a number of consumer protections, such as fee disclosures, opt-in for overdraft protection, and cooling-off periods during which overdraft services are suspended (*e.g.*, limiting the number of overdrafts available within a specific time period). The OLA and its members support these voluntary developments, which are consistent in spirit with the OLA's Best Practices and Code of Conduct for short-term lending.

Another important aspect of the prepaid market is the offering of overdraft and other credit features in connection with prepaid accounts. These services expand access to credit for consumers who rely on prepaid accounts as their primary payment mechanism and choose to use their accounts to access overdraft or credit features. The OLA's members, for example, may partner with a bank or prepaid program manager to offer short-term credit through an account advance feature, a loan that is loaded to the account, or through an overdraft service that ensures the consumer has access to funds in a financial emergency.

In particular, consumers rely on short-term loans when they have unexpected expenses or emergencies, such as healthcare bills, utility bills, or a loss or reduction of income. A lack of access to short-term lending can cause significant hardship for consumers, such as bounced checks, disconnected utilities, or the inability to pay for medical expenses or other necessities. Restricting short-term lending "could deny consumer access to credit, limit their ability to maintain formal credit standing, or force them to seek more costly alternatives".<sup>5</sup> For example:

without credit a broken-down car may not be repaired, at least for a while. Without transportation to work, the consumer could lose significant income, possibly a job, and almost certainly the ability to manage normal daily activities. Missed car payments that lead to repossession could have the same effects. A payday loan might also be the only reasonable option to provide for basic needs. For example, missed utilities payments can lead to disconnected services. At a less-essential level, a lack of access to credit may keep a small business owner from meeting

---

<sup>4</sup> According to the Federal Deposit Insurance Corporation, "One in five or 24 million households were underbanked in 2013, consisting of an estimated 68 million people." [www.fdic.gov/news/news/press/2014/pr14091.html](http://www.fdic.gov/news/news/press/2014/pr14091.html).

<sup>5</sup> Kelly D. Edmiston, Fed. Reserve Bank of Kan. City, *Could Restrictions on Payday Lending Hurt Consumers*, 37 (2011), available at <http://www.kc.frb.org/publicat/econrev/pdf/11q1Edmiston.pdf>.



unexpected expenditures or short-term revenue shortfalls. Payday loans are simple and convenient for consumers to use.<sup>6</sup>

The OLA is concerned that the NPRM’s sweeping restrictions for the prepaid industry have the potential to limit consumer access to these important products and services, including prepaid products that include overdraft or credit features. We believe that the best approach is to ensure that prepaid products are marketed to consumers in a clear and straightforward manner, allowing consumers to make informed decisions in managing their finances. As noted by Director Cordray, the Bureau “recognize[s] the need for emergency credit” and that the “right approach [is] to protect consumers and ensure that they have access to a small loan market that is fair, transparent, and competitive.”<sup>7</sup>

We agree that the millions of consumers who choose to use prepaid products should have the same choices when it comes to financial services as consumers who choose to use more traditional payment mechanisms. We therefore encourage the Bureau to ensure that the proposed rules – particularly those related to overdraft and credit – do not deny consumers access to important financial products and services.

### **1. The NPRM’s Broad Definition of Prepaid Account Is Likely to Stifle Innovation in the Market.**

The OLA is concerned that the NPRM’s broad definition of prepaid account is likely to have an adverse impact on innovation and the use of technology in the prepaid market. We therefore encourage the Bureau to limit the scope of the final rule to general purpose reloadable (“GPR”) cards as was originally proposed in the Bureau’s announced notice of proposed rulemaking (“ANPR”).<sup>8</sup>

The NPRM defines a prepaid account as including “cards, codes, or other devices capable of being loaded with funds and usable at unaffiliated merchants or for person-to-person transfers, and are not gift cards (or certain other related types of cards).”<sup>9</sup> The proposal covers GPR cards, payroll cards, government benefits cards, mobile and other electronic prepaid accounts, tax refund cards, campus prepaid cards for students, peer-to-peer payment products, and other similar products.<sup>10</sup>

The Bureau’s proposed definition of “prepaid account” freezes the industry based on today’s market and then imposes sweeping rules that will have unforeseeable consequences on

---

<sup>6</sup> *Id.* at 37-38.

<sup>7</sup> Remarks by Richard Cordray at the Payday Loan Field Hearing in Birmingham, AL (Jan. 19, 2012), available at <http://www.consumerfinance.gov/newsroom/remarks-by-richard-cordray-at-the-payday-loan-field-hearing-in-birmingham-al/>.

<sup>8</sup> 77 Fed. Reg. 30923 (May 24, 2012).

<sup>9</sup> NPRM at 77102, 77208.

<sup>10</sup> NPRM at 77132–33.



the development of new products and services for consumers. The OLA fears that the Bureau's definition of "prepaid account" will stifle the continued development of these innovative and exciting new products and services. At a minimum, the definition of "prepaid account" should exclude digital wallets, peer-to-peer services, and other developing mobile technologies. These products and services are continuing to develop and overly burdensome regulations at this early stage could limit future innovation to the detriment of consumers.

## **2. The OLA Supports Disclosures for Prepaid Cards but Recommends Modifications to the Bureau's Proposal.**

The OLA supports the Bureau's proposal to establish short and long form disclosures for prepaid accounts. We agree with the Bureau's goal of increasing transparency in the market so that consumers can make informed decisions when acquiring and using prepaid products. The OLA, for example, has published Best Practices for the short-term lending industry that require disclosure of all loan terms in a transparent and easy to understand way. We encourage the Bureau to review its proposed short form disclosures to ensure that the most important information is provided to consumers in a manner that consumers will notice and understand. Our concern, as shared by the Bureau, is that consumers can become overwhelmed when provided too much information, and that overly complex disclosures in connection with prepaid accounts might limit the ability of prepaid issuers to provide other relevant information (such as usage instructions).<sup>11</sup>

We therefore suggest that the short form not require any disclosures related to overdraft or credit fees as these services are not automatically included with a card and may only be set up with express consumer consent. Rather, information on overdraft and credit fees should be provided to consumers when they are first offered the service. Otherwise, consumers are likely to be confused by disclosures on packaging related to services that they may never be offered or that the consumer may never seek to use. In this regard, the Bureau acknowledges that "receiving notice about credit features on the short form disclosure might be confusing to consumers . . ." <sup>12</sup> The Bureau's own "consumer testing . . . indicated that when participants were shown prototype short forms, most understand that they represented only a subset of fee information and that they could potentially be charged fees not shown on the form." <sup>13</sup> Moreover, the Bureau has proposed that all consumers receive a comprehensive long form disclosure in connection with opening a prepaid account, which gives the Bureau flexibility to further narrow the short form disclosure to focus on the account features and fees that are of most immediate relevance to consumers.

---

<sup>11</sup> *Id.* at 77150.

<sup>12</sup> *Id.* at 77164. We believe, for example, that including a disclosure on product packaging that "[t]his card may charge credit-related fees," *see id.* at 77309, is likely to confuse consumers when they are shopping for cards and before any such service is even available.

<sup>13</sup> *Id.* at 77157.



### **3. The NPRM's Compulsory Use Proposal Has the Potential to Limit Consumer Access to Short-Term Lending through Prepaid Cards.**

The Bureau should reconsider the proposed compulsory use provision for prepaid accounts, which has the potential to limit consumer choice and deny consumers – particularly the underbanked – access to an important source of credit. At a minimum, the Bureau should clarify that under Regulation E prepaid accounts may offer incentives to consumers to encourage repayment by recurring, preauthorized electronic fund transfers.<sup>14</sup>

Regulation E prohibits any person from conditioning the extension of credit to a consumer on the consumer's agreement to repay the credit by preauthorized electronic fund transfer.<sup>15</sup> The regulation exempts from the prohibition credit extended under an overdraft credit plan or to maintain a minimum balance in the consumer's account.<sup>16</sup> The NPRM, however, does not extend the Regulation E exemption for overdrafts to prepaid accounts; such accounts would be required to offer consumers a means to repay their outstanding credit balances other than by automatic repayment.<sup>17</sup>

The NPRM fails to recognize that the proposed compulsory use restriction, which imposes a heightened regulatory burden on prepaid accounts as compared to other financial products under Regulation E, has the very real potential to limit consumer access to overdraft and credit features. The potential impact on consumers is magnified when the compulsory use provision is combined with the other Regulation Z requirements that the Bureau has proposed for prepaid accounts (discussed below). Moreover, the potential adverse impacts of the proposed rule are likely to be felt most immediately by those consumers who lack formal bank accounts or access to other financial services and rely on a prepaid account as their primary financial instrument.

The OLA supports making overdraft and credit-linked prepaid products reasonably and conveniently available to consumers. In addition, the OLA believes that the Bureau should not place prepaid products at a competitive disadvantage by imposing more restrictive requirements on prepaid products than are currently in place for other products under Regulation E, especially since the Bureau has acknowledged the importance of prepaid products to millions of consumers.<sup>18</sup>

---

<sup>14</sup> *Id.* at 77277, n.493.

<sup>15</sup> 12 C.F.R. §1005.10(e)(1).

<sup>16</sup> *Id.*

<sup>17</sup> NPRM at 77133.

<sup>18</sup> *Id.* at 77211.



#### **4. The NPRM's Application of Regulation Z's Lending Restrictions to Prepaid Cards Will Limit Consumer Access to Short-Term Lending.**

The NPRM proposes to extend a number of Regulation Z's credit requirements to prepaid accounts that include an overdraft or credit feature. The OLA is concerned that these requirements would impair the convenience and flexibility of prepaid products, especially since consumers look to prepaid products as a faster, more convenient alternative to credit cards. Specifically, many of these restrictions appear to target short-term lending in connection with prepaid accounts. The Bureau's proposed compulsory use and offset prohibitions, for example, will effectively deny consumers the ability to access short-term credit in connection with prepaid accounts.

In this regard, we note that the NPRM's cost-benefit analysis does not appear to include any studies or data that address the extent to which the proposed rules might impact the ability of consumers to access overdraft and other short-term credit features. Given the Bureau's statutory mission to ensure consumer access to credit, we suggest that the Bureau revise the proposed credit provisions to ensure that they do not limit consumer access to overdraft and credit features in connection with prepaid accounts.<sup>19</sup>

##### **A. Regulation Z 30-Day Waiting Period.**

The NPRM's proposal to prohibit a prepaid account from allowing a consumer to access credit until 30 days after the account has been registered will deny prepaid users access to credit at the very time when they are most in need of emergency funds. As noted in the NPRM, many of the consumers who submitted comments to the ANPR "voiced support for [prepaid overdraft services], stating that the overdraft fee charged by their prepaid products was less than the overdraft fees charged by banks, allowing them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs."<sup>20</sup> We believe that the practical impact of the proposed rule will be to limit consumer choice and access to overdraft services and other credit features.

According to the NPRM, the Bureau has proposed the Regulation Z issuance rules for prepaid accounts "to ensure that consumers understand that they are not required to request any credit feature in order to register and use a prepaid account."<sup>21</sup> If that is the Bureau's concern, then we suggest a better approach would be to require prepaid issuers and creditors to provide appropriate disclosures and information to consumers so that consumers have the freedom to make their own decisions on when to access credit. The OLA's members believe that consumers are in the best position to determine when and how to use their prepaid accounts, and that the Bureau can promote consumer choice by applying more flexible issuance rules to prepaid

---

<sup>19</sup> Section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of a regulation to consumers, including the potential reduction in access by consumers to financial products and services. *See id.* at 77256, n.392.

<sup>20</sup> *Id.* at 77205.

<sup>21</sup> *Id.* at 77137.



accounts. This is particularly important given that many consumers seek short-term credit in response to emergencies or unexpected reductions in income. For consumers facing such emergencies and who rely on prepaid accounts, the ability to access credit quickly and conveniently can mean the difference between repairing a vehicle or having to sell it to make ends meet. The Bureau’s final rule should support consumers by ensuring that they have access to short-term funds rather than making such funds cost-prohibitive or unavailable.

## **B. Regulation Z Offset Prohibition.**

The Bureau’s proposed rule explains that “overdraft lines of credit, overdraft services, and similar credit features offered in connection with a prepaid account satisfy the definitions of (1) credit; (2) open-end (not home-secured) credit plan; and (3) credit cards under [the Truth-in-Lending Act (TILA)] and Regulation Z.”<sup>22</sup> Thus, the proposed rule generally treats overdraft, advances, and other forms of credit accessed by a prepaid card as “open-end credit” under TILA and Regulation Z. By way of background, Regulation Z currently prohibits credit card issuers from offsetting a cardholder’s indebtedness arising from a consumer credit transaction against “funds of the cardholder held on deposit with the card issuer,” unless authorized in writing by the cardholder, in which case the card issuer may *periodically* deduct the cardholder’s indebtedness from a deposit account held with the issuer.<sup>23</sup>

Under the proposed offset rule for prepaid accounts, however, “card issuers could only move funds automatically from an asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt *no more frequently than once per month*, such as on the payment due date, and only pursuant to the consumer’s signed, written agreement that the issuer may do so.”<sup>24</sup> In other words, a creditor would only be permitted to debit funds once per month from a prepaid account with the consumer’s authorization. Thus, the Bureau has narrowly interpreted Regulation Z’s offset provision in the prepaid context in a way that effectively cuts off consumer access to short-term credit with a due date of less than one month.

The Bureau, however, acknowledges that neither TILA nor Regulation Z define the term “periodically” for purposes of the offset prohibition. The Bureau’s rationale for interpreting “periodically” to mean no more frequently than once per month is that some issuers may attempt to obtain a consumer’s written authorization “to deduct all or part of the cardholder’s credit card debt on a daily or weekly basis . . . to help ensure that the debt is repaid.”<sup>25</sup> The OLA respectfully believes that the Bureau’s interpretation of “periodically” as once per month is arbitrary<sup>26</sup> – the unstated message, it would seem, is that the Bureau does not support short-term credit in connection with prepaid accounts. Such credit, however, provides an important service,

---

<sup>22</sup> *Id.* at 77205.

<sup>23</sup> *See generally* 12 U.S.C. § 1026.12(d).

<sup>24</sup> NPRM at 77209 (emphasis added).

<sup>25</sup> *Id.* at 77239.

<sup>26</sup> The Bureau does not adequately explain why it applied a one month limitation in place of a shorter time period.



and the proposed rule should not impose temporal limitations that would have the practical effect of denying consumers access to short-term credit.

### **C. Proposed Fee Cap for Prepaid Products under Regulation Z.**

The OLA strongly encourages the Bureau to remove the 25% fee cap from the final rule, or to include broader exemptions (such as for cash advance) that are more appropriately tailored for prepaid account usage. The Bureau's proposed limits on charging fees in connection with credit will likely make it cost-prohibitive for issuers to provide overdraft and other credit services. As a result, the NPRM would deny consumers access to these services, which would have a disproportionately harsh impact on underbanked consumers who rely on prepaid accounts as their primary financial product.

The prohibition on charging fees in excess of 25% of the total amount of credit authorized upon account opening was designed to address a specific concern involving subprime credit cards.<sup>27</sup> Given the differences between credit cards and prepaid cards, the OLA suggests that the Bureau reconsider application of Regulation Z's fee cap to prepaid accounts, particularly as many consumers may seek to use their accounts as a way to access short-term credit. The proposed fee cap will likely limit the ability of consumers with short-term liquidity needs to access credit features that are simple, quick, and convenient. Consumers who use short-term loans do so knowing that they may have to pay higher fees. As noted, the OLA has established Best Practices to ensure that consumers are provided disclosure of all loan terms in a transparent and easy to understand way. For these reasons, short-term credit should not be subjected to the same regulatory limits as have been developed for credit cards.

### **D. Other Regulation Z Credit Requirements.**

Finally, the NPRM proposes to apply a number of Regulation Z's requirements to prepaid accounts that will negatively impact the convenience and flexibility of prepaid products, especially since consumers use prepaid products as a faster, more convenient alternative to credit cards. The OLA encourages the Bureau to review the potential costs and benefits of these rules to confirm that they will not adversely impact the ability of consumers to use their prepaid accounts to obtain overdraft and related credit features. These restrictions include:

- Requiring an ability-to-repay analysis before approving credit or overdraft;
- Requiring that consumers have at least 21 days to repay amounts associated with a credit feature prior to assessing any late fees, together with a requirement that such fees be "reasonable and proportional" to the account violation;
- Restricting increases on interest rates applicable to the use of a credit feature, unless the cardholder has missed two consecutive payments; and

---

<sup>27</sup> *Id.* at 77247.



- Requiring a 45-day advance notice of any interest rate increases so that the consumer may cancel the credit feature.

The OLA and its members believe that these requirements will make it difficult, if not impossible, for prepaid accounts to offer overdraft and similar credit services to consumers. As acknowledged by the Bureau, however, short-term credit serves an important role for consumers who need access to emergency funds. We therefore suggest that the Bureau narrow these restrictions so that consumers are able to use their prepaid accounts to access credit. We also suggest that the Bureau clarify whether the lender that establishes the credit line or the prepaid account provider is responsible for complying with the proposed rule's credit and related disclosure requirements.

#### **5. The NPRM Does Not Provide the Industry with Sufficient Time to Implement the Proposed Rules.**

The OLA and its members are concerned that the NPRM does not provide the prepaid industry and its service providers sufficient time to prepare for and implement the sweeping changes proposed in the rule. The OLA's members have heard from their prepaid business partners that the NPRM does not provide adequate time for the industry to review the new requirements, revise internal work flows, approve new compliant products and packaging, work with manufacturers to build inventory, and advertise and market the new products. The disclosure requirements, alone, will require several months for issuers to design, review, and approve new compliant products and packaging. From there, it will take additional time and effort for manufacturers to build inventory and for issuers to advertise and market the new products. At the same time, computer systems will need to be upgraded to ensure that the required disclosures are available online, incorporated into telephone scripts, etc.

Moreover, the prepaid industry needs time to work with the various industries that rely on prepaid products – such as the short-term lending industry – to coordinate in developing compliant products and services. It is simply unreasonable, and ultimately unworkable, for the Bureau to propose a sweeping overhaul of an industry within nine months. We suggest that a more reasonable approach would be to provide an 18-month implementation timeline. This will not only provide the industry sufficient time to comply with the rule, but will also allow the industry to assess any additional requirements that may impact prepaid accounts in future Bureau rulemakings.

\* \* \* \* \*



The OLA appreciates the opportunity to comment on the Bureau's proposed rulemaking for prepaid accounts. We look forward to working with the Bureau to develop final rules that establish important consumer protections without stifling innovation in the market or consumer access to overdraft and credit features.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lisa McGreevy".

Lisa McGreevy  
President and CEO  
Online Lenders Alliance