March 23, 2015

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G St., N.W.
Washington DC 20552

RE: Docket No. CFBP-2014-0031
RIN 3170-AA22

Dear Sirs,

The Center for Financial Services Innovation (CFSI) is submitting this letter in response to the request for comment by the Consumer Financial Protection Bureau (CFPB, the Bureau), published on December 23, 2014. We appreciate the opportunity to respond to the CFPB’s request for comments on proposed rules for Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z). We congratulate the Bureau on this substantial undertaking. Like you, we recognize the important role that prepaid products and services can play in the financial health of U.S. consumers and we are committed to promoting high-quality financial products. We believe that financial services can be a force for good in people's lives and that meeting consumers’ needs responsibly is ultimately good for both the consumer and the provider.

CFSI is a national authority on consumer financial health. We lead a network of financial services innovators committed to building higher quality products and services. CFSI informs, advises, and connects its network to seed innovation that will transform the financial services landscape. Our vision is to see a strong, robust, and competitive financial services marketplace where the diversity of consumer transaction, savings, and credit needs are met by a range of providers offering clear, transparent, and high-quality products and services at reasonable prices. This vision is guided by our Compass Principles – Embrace inclusion, Build trust, Promote success, and Create opportunity. These principles are built on a solid foundation that recognizes the core market values of profitability and scalability, deep customer knowledge, safety, variation and choice, consumer-provider relationships, and cross-sector participation.

We have been working in the prepaid arena since 2004 when we published an article on stored-value cards in an OCC Community Development publication. In 2012, we released our Compass Guide to Prepaid, developed in consultation with industry and consumer stakeholders, which laid out a set of aspirational guidelines for design and delivery of prepaid cards. In the same year, we also developed a proposed fee box for prepaid cards in our report “Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards.” In March, 2014, we released a Prepaid Industry Scorecard, which tracks the progress the industry has made since the release of the Compass prepaid guide. We released the Compass Guide to Payroll Cards in January, 2015, again in consultation with industry and consumer stakeholders.
CFSI believes we have broad and substantial cross-sector experience in the prepaid arena and are well-prepared to comment on the proposed rules. Our comments focus on four key areas: what will be most valuable for consumers; what are the misalignments; what are the unintended consequences or inadvertent harms; and what are the consequences for innovation.

**What Will Be Most Valuable for Consumers?**

CFSI supports the need for clear and standard regulation in the prepaid card industry. The core of our mission is the financial health of consumers, particularly those who are underserved. Having access to high-quality financial services is crucial for consumers to manage their day-to-day financial lives well, leading to long-term resilience and opportunity. Thus, we consider how the proposed rules for prepaid accounts will benefit consumers who use and rely on these products to function in their daily financial lives.

**Consumer Diversity and Uneven Treatment of Account Substitutes**

As the use of general purpose reloadable (GPR) cards increases, so do the types of customer segments using these products. Consumers increasingly purchase prepaid cards for a variety of reasons – as a checking account substitute, as a budgeting and savings tool, as a mechanism for self-discipline, or to minimize fees. Many also rely on prepaid cards to receive direct-deposited funds on a regular basis from employment wages or from the disbursement of funds from student financial aid and other loans, insurance payouts, or government benefits. Therefore, it is important that regulation governing prepaid accounts reflect the various needs of consumers. To the extent that prepaid accounts are substitutes for checking accounts, CFSI believes that prepaid card customers deserve the same levels of protection and functionality that are available on other types of transaction accounts, such as demand deposit accounts. There are a few aspects of the proposed rules – for example, deposit insurance, the treatment of transaction history, and overdrafts – that create unevenness between the parameters for prepaid cards and checkless checking accounts. We believe consumers would benefit from greater consistency.

*Deposit insurance.* One of our core guidelines in the Compass Guide to Prepaid states that *Consumer funds are safe and fully insured.* The Guide goes on to provide examples of ways to ensure that consumer funds are protected, such as full FDIC or NCUA pass-through insurance, prominent display of the FDIC or NCUA logo, and statements on the provider’s website and card packaging to indicate that consumers’ funds are insured. Currently, the Bureau does recognize that most prepaid funds are eligible for pass-through insurance provided that certain requirements are met for pooled accounts, and most, though not all, providers already include pass-through insurance on prepaid accounts. However, we believe the Bureau should require this coverage to ensure that all prepaid accounts are safe and fully insured.

*Transaction history.* The 18-month look-back feature for transactions is a longer time-frame than other account-type products. Often the availability of historical transaction data is provided by the processors who retain this information. Shifting the responsibility to provide transaction history to issuers or program managers may lead to higher costs that potentially result in higher fees. Government benefit providers may also find it difficult to manage transaction histories that reflect the shifting flow of benefit recipients they serve. Additionally, it may not be feasible to
hold one-time use cards, such as insurance disbursements, to the same standards as cards that are analogous to transaction accounts.

**Overdrafts.** In CFSI’s Compass Guide to Prepaid, we state: *When offering credit or overdraft services with prepaid accounts, providers should exercise caution and offer only high-quality, safe, affordable options.* And in our Compass Guide to Small-Dollar Credit, we address the aspirational guidelines for the design and delivery of small-dollar credit, which include ability to repay, loan structure, transparency, and borrower’s rights. In the spirit of resolving uneven treatment of financial product regulations and providing consumers with consistent product features, we encourage the Bureau to suspend their decision on how to treat overdraft on prepaid cards until you issue rules for overdraft on checking (demand deposit) accounts. If overdraft is to be treated as credit, it should be done so in a consistent manner across products that serve as substitutes for one another. We believe this reduces consumer confusion and improves market efficiency.

**Added Value of Posting Card Holder Agreements in the Case of Third-Party Providers**

Prepaid card regulation should add value for consumers and minimize uncertainty or confusion. We believe there are several places in the proposed rules that have the potential to confuse or overwhelm consumers, rather than assist them in their choices. For example, while posting prepaid cardholder agreements on the CFPB website may benefit GPR consumers, the regulation may not achieve the desired outcome for consumers of other types of open-loop prepaid cards.

As a case in point, not all card options are available to each consumer. Some consumers receive their pay, government benefits, or student financial aid services via prepaid cards, and in these cases, it is a third party – the employer, the government agency, or the university – that has chosen the card, not the consumers themselves. Practically, there is no utility in posting cardholder agreements to enable search and comparison among choices that consumers do not have, and can lead to confusion. The Bureau should require that card holder agreements be posted in a way that employees, benefit recipients, and students can access their own agreements, without the implication that these can be compared in the same sense the consumers might shop for GPR cards. So, for example, these could be posted on the employer or university site, but not necessarily on the issuer or program manager site. Additionally, we see limited value in having these posted on the CFPB site.

**Comparison Shopping with Actionable Information**

We applaud the CFPB in its effort to provide clear language to enable consumers to shop and compare across multiple cards when this is possible, such as in the case of GPR cards. While transparency and clarity are paramount for consumers, they can only gain value from these goals when they are able to parse the card information provided and apply it to the choice they make to sign up for a card and the daily choices in card use thereafter. We believe there are a few areas that may not provide as much value as anticipated and, in fact, may create misunderstandings.

**Information on Free Services.** The Bureau’s very prescriptive short form does not necessarily provide users with all the important information they need to choose among cards. The Bureau would require providers to list the highest fee that a consumer could incur for a particular
activity. In many cases, fees can easily be avoided by taking certain actions or using the card in specific ways, but no clear explanation is allowed on the short form. We do not believe the asterisk does this job effectively since most consumers are unlikely to seek out this footnote. Thus, consumers may make suboptimal decisions based on the short form because they did not have access to the most relevant information. Given that the customer’s attention is primarily focused on the short form, and they may never absorb details beyond this point, we feel it is vital that this form not only display key information on fees and particulars, but leave room for direct guidance, which many issuers and program managers currently provide in packaging for J-hook format sales. CFSI believes that allowing providers to present information on no-cost options would help consumers make more informed choices and decisions.

Third-Party “Warnings.” In the case of payroll and government benefit cards specifically, we believe that consumers may view the disclosure language “You do not have to get your payments on this prepaid card. Ask about other ways to get your payments” as a warning and shy away from accepting the card. CFSI believes that in many instances, payroll and benefit cards offer more benefits to consumers and can result in lower fees than alternative payment methods, such as paper checks that consumers take to check cashers. CFSI suggests that the Bureau drop the first statement while retaining the second, or simply note that prepaid cards are only one means to receive funds and that consumers have other choices.

What Are the Misalignments?

**Mismatch between Proposed Rules and Prepaid Features or Functionality**

There are several aspects of the proposed rule that CFSI believes are intended to ensure that all forms of prepaid open-loop cards maintain maximum consumer transparency, but in practice may exhibit misalignment between intent and outcomes for consumers. This misalignment may be due to differences in card pricing and consumer use among GPR cards, or due to differences in provision, agreements, and functionality that inherently exist between GPR cards and more specialized payroll, government benefit, or student financial aid disbursement prepaid cards.

**Disclosures**

The Bureau seeks to ensure that consumers have 1) clear access to information about the cost of the most commonly assessed fees, 2) the ability to compare such pricing among cards on the market in a parallel manner to comparison shop and identify the most cost effective choice for their needs, and 3) the ability to anticipate the fees they may expect to incur when using the card. In practice, however, there are several aspects in the specifics of the short form requirements that may work against these goals.

**Incidence-based Fees.** The requirement that the top three most prevalent fees incurred be listed poses the problem that the most frequent fees may vary from card to card. This hampers easy comparison of fees in a parallel fashion by prospective consumers if fees for the same card services are not listed on all cards. It also has the potential to create consumer confusion as to just what they are supposed to be comparing. The Bureau may want to do additional research to determine if there are more standardized fees – by incidence, nationally – that could be included in the short form.
**Highest Fee.** Presenting only the maximum fee on the short form may also lead consumers to make a poor choice. Earlier we pointed out the need to provide a way on the short form to let consumers know if there are “no cost” ways to use the card. In addition, it is likely that the amount of a maximum fee may vary by metro area or region depending on the availability of in-network ATMs and other vagaries. More importantly, the median fees consumers are most likely to pay for a card service will often differ from – and be lower than – the maximum possible fee. If consumers make their comparisons based on the highest priced contingencies rather than their most likely experience with using the card, they may choose a card that will be more costly for them. A graphic (e.g. a circle that indicates the proportion of customers who actually pay this fee) may be useful to convey information about the likelihood that consumers will actually have to pay any given fee. Alternatively, median fees, or a range of fees from lowest to highest could be provided to give consumers more practical information and a more realistic sense of what they may pay for a card service rather than only the worst-case scenario.

**Third-Party Providers**

We have also identified a few areas of misalignment between the intent to provide clear consumer information and the specifics of prepaid cards offered for payroll, government benefits, or student financial aid disbursements. Overall, these concerns stem from the fact that consumers generally do not have the ability to comparison shop or choose from among several card options – although they can usually choose whether or not to receive funds on a prepaid card rather than another type of financial product (with the exception of some government benefit programs).

**Providing Relevant Comparisons.** While we believe it is crucial that consumers have full understanding of card pricing before they opt in to using a card for payroll or other fund disbursement, comparison shopping among cards does not fit with the choices consumers are actually able to make. The information may appear useless, overwhelming, or confusing. We have already commented on the distinction between providing a cardholder agreement and posting cardholder agreements in these third-party cases. A more apt comparison, however, might be to show consumers the card agreement they are being offered and provide them the ability to clearly compare it with other options, such as a checking account direct deposit or local check cashing fees.

**Disclosures.** With respect to the short form fee disclosures, as previously discussed, we believe that the requirements – both as currently written and with respect to our recommendations above – clearly apply to GPR cards but lack clarity for payroll, government benefit, and student card programs in terms of ability to provide actionable information for consumers.

For example, the highest fee for a payroll card issued by the same company – or even the same employer – may vary greatly depending on the specific card agreement, state laws, the availability of in-network ATMs in the area near the employee, or the extent to which the employer’s human resources practices support the consumer in using the card in an optimal fashion. If the fees displayed for the payroll card reflect only national figures, or the highest fees possible for the most expensive terms of any agreement entered into by the provider, consumers
cannot get an accurate picture of the fees they might expect to pay. Card fee disclosures should ideally reflect the agreement at hand to ensure transparency and accuracy.

Alignment with State Disclosures. Many states already require unique disclosures forms for payroll and benefit cards. We believe it is important to provide clarity about how providers should interpret these requirements in the context of federal requirements, in light of any redundancies or inconsistencies between these two. Where possible, we believe that the proposed rule should include guidelines for combining or streamlining state and federal forms provided to consumers to increase the likelihood that consumers will be able to focus on, and digest, the most important information while decreasing the likelihood that they will be overwhelmed with forms and unlikely to take note of key pieces of information.

What Are the Unintended Consequences or Inadvertent Harms?

Although the goal of the proposed rule is to maximize consumers’ knowledge, self-efficacy, safety, and financial well-being when using open-loop prepaid products, CFSI has identified several areas where, as currently written, the rule may have the opposite effect. We would like to call attention to what we believe are several key unintended consequences in the short form disclosures and credit provision sections of the proposed rule.

Disclosures

We have previously addressed the issues of providing actionable information on the short-form disclosure (e.g. allowing providers to inform consumers about how to avoid fees, providing information about the likelihood that consumers will have to pay a given fee, etc.). We mention this again in the context of the potential for inadvertent harm to consumers in making a suboptimal choice. To better ensure consumer well-being and healthy prepaid card use based on informed choices, we recommend that the short form include more information that is actionable and relevant to the average consumer, while other information be reserved for the long form, which consumers and industry watchers are free to consult if they are more highly motivated to learn all details.

Inadvertent Overdrafts

Consumers may find themselves with negative balances for a variety of reasons, some of which are inadvertent. Force-posted transactions, pre-authorizations, provisional credit reversals, and stand-in transactions all can result in negative balances in consumers’ prepaid accounts. As currently written, the proposed rule would treat these circumstances as incursions of overdraft that fall under Regulation Z. Furthermore, it appears that the credit provisions are triggered even if the issuer or program manager does not charge a fee to the consumer for these events, provided any other type of fee is charged for card usage as it normally would be, such as a monthly fee or per-use fee. This can have two particularly adverse effects for consumers of prepaid products.

Selection of No-overdraft Prepaid Options. Some consumers seek out prepaid cards explicitly because they want an account that does not allow overdraft and is predicated on using only positive funds available. Many, if not most, payroll card and government benefit card agreements
are written with a “no overdraft feature” provision. In addition many GPR providers market their cards as such, clearly signaling to prospective consumers that a prepaid product can satisfy this need. However, under these rules, no prepaid provider will be able to guarantee avoiding an occasional – albeit unintended – overdraft, so providers will no longer be able to advertise and offer “no overdraft” products to consumers who want these accounts. Finding no cards that advertise the ability to meet their needs, many consumers who currently seek out prepaid cards as a safe and effective alternative to bank accounts or cash use may be discouraged from using a prepaid card.

Waiting Period Imposed for Consumer Protections. A second potential harm to the consumer also stems from the conflation of inadvertent overdraft incidents with the provision of overdraft as a form of consumer credit. The proposed rule stipulates that providers must wait 30 days before offering overdraft and other credit features on a prepaid card. However, even within the first 30 days there is a small – but nonzero – chance of encountering an inadvertent overdraft. Thus, we are concerned that most cards will run afoul of the rule. Buying a card and waiting 30 days does not seem like a viable option – and definitely is not an option for payroll or government benefit cards.

As previously mentioned, we encourage the Bureau to suspend their decision on how to treat overdraft on prepaid cards until you issue rules for overdraft on checking (demand deposit) accounts. If overdraft is to be treated as credit, it should be done so in a consistent manner across products that serve as substitutes for one another. If, however, the Bureau moves ahead with the overdraft provisions in this proposed rule, we believe there should be an exemption for inadvertent overdrafts that do not resemble – either in their intent, marketplace function, frequency of imposition, or third-party responsibility – the use of short-term credit that appears to be the focus of the Regulation Z provisions in the proposed rule.

What Are the Consequences for Innovation?

CFSI highly values innovations in financial services that promote financial health. It is crucial that regulations not stifle or limit future innovative products and services that meet consumer needs in high-quality ways. Many new services in the marketplace, such as digital wallets and credit products with a savings feature, can meet the needs of multiple consumer segments. Without knowing the future direction of financial services, regulations should leave the door open for new high-quality ideas and marketplace experimentation.

Take, for example, the short form disclosure and the prescriptive listing of fees. Services such as expedited mobile remote deposit capture (mRDC) are not listed on the short form as a common fee but have the potential to become more widespread over time. Limiting the types of fees listed and how they are presented could stifle future innovative fee structures on prepaid products, such as a no-fee/interchange-revenue-only product. Furthermore, while new fees might be listed in the incidental fees section, the current structure of the fee schedule would require the Bureau to issue new proposed rules each time it wants to update or change the fee box in some way, which we know can be a long and involved process.
The fee box requirements may also pose a problem for some new products on the market that are entirely digital. It is unclear how distinctions between short form and long form disclosures would function for these products since information would be conveyed to consumers through online formats. There may be more innovative approaches – for example, short instructional videos – that a digital or mobile account opening process could use to present fee and feature disclosures. As further innovation moves more payments products online, structuring more flexibility in the fee box requirements may be beneficial to consumers, providers, and the Bureau in the long run.

The Bureau proposes to address credit features on prepaid cards by applying Regulation Z. It is unclear if this regulation will meet the variety of consumer needs when it comes to new generations of credit products. In some cases, consumers do not need a credit card-like product or will simply not meet the underwriting criteria. Thus, users who need very short-term micro credit (amounts under $100) to cover a necessary purchase, such as groceries, utilities, or medication, may not have access to this type of credit as they had in the past. In this instance as well, we believe that applying the current provisions within Regulation Z to all possible credit features will limit future innovation of high-quality credit products for prepaid customers. If the Bureau chooses to apply credit regulations in the prepaid card marketplace, we would recommend you review the current regulations with an eye to updating the rules to reflect the products and services in today’s marketplace, and with an eye toward the future.

**Conclusion**

CFSI believes that access to high-quality financial services is necessary for consumers’ financial health and any clarity that the Bureau provides in rules for prepaid cards and accounts is welcome. Access to high-quality transactional services is a key component of a successful financial life for consumers. Having the ability to spend, save, borrow, and plan safely and effectively can help individuals manage their day-to-day finances, weather financial shocks, and provides them with longer-run financial opportunities.

Well-designed products built upon our Compass Principles have the potential to help people improve their financial well-being and financial health. In our vision for a financial marketplace with high-quality products, consumers will know what to expect when they choose and use services – and will have consistent experiences that reinforce healthy financial behaviors. Financial service providers will benefit from a standard, consistent, and level playing field. And markets will benefit from increased efficiency, efficacy, and innovation.

Sincerely,

Rachel Schneider  
Senior Vice President  
Center for Financial Services Innovation