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March 23, 2015

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

Re: Comment Letter in Response to Notice of Proposed Rulemaking on Prepaid Accounts [Docket No. CFPB–2014–0031]

Dear Ms. Jackson:

This Comment Letter is submitted to the Consumer Financial Protection Bureau (the "**Bureau**") on behalf of the Network Branded Prepaid Card Association ("**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 in the *Federal Register* on December 23, 2014, at 79 Fed. Reg. 77102 (the "**Proposed Rule**"). As the leading trade association representing all of the different constituents in the prepaid value chain, the NBPCA appreciates the opportunity to share its comments on the Proposed Rule and respond to the numerous questions raised by the Bureau in the Proposed Rule. We believe the diversity of NBPCA's membership uniquely positions us to provide comprehensive commentary on the impacts of the Proposed Rule.

Prepaid Accounts are a valuable product used by a number of types of organizations (*e.g.*, state and federal government, universities and corporations) to make a wide variety of payments (*e.g.*, government benefits, payroll, healthcare reimbursements, transit reimbursements, disaster relief, rebates and incentives, insurance claim payments, student loan disbursements, and corporate expense reimbursement). Prepaid cards are also used by unbanked and underbanked consumers for specific purposes such as travel and remittances as well as an economical and convenient substitute for a traditional bank account. In fact, general purpose reloadable ("**GPR**") prepaid cards ("**GPR Cards**") provide consumers with convenient, safe access to funds and pricing that is often less than functionally similar financial tools. These benefits have been key drivers of the popularity of GPR Cards. GPR Cards are available in more than 200,000 retail locations, bank branches and other

[1] The NBPCA is a non-profit trade association representing a diverse group of organizations that support network branded prepaid cards and other forms of prepaid access used by consumers, businesses and governments. The NBPCA's members include prepaid access providers and sellers, in addition to financial institutions, card organizations, processors, program managers, marketing and incentive companies, card distributors, and law and media firms. The NBPCA is active on behalf of its members to inform and educate government officials, the media and consumers about these important payment products that provide critical access to financial services for the underbanked and underserved, as well as convenience, security and efficiency to users. The comments made in this letter do not necessarily represent the position of all members of the NBPCA.

locations making them convenient to consumers in all neighborhoods, including areas not serviced by traditional bank branches or ATMs. The wide availability of GPR Cards is particularly appealing to the approximately 67 million[2] Americans who are unbanked or underbanked, who have limited or no access to bank branches or ATMs in their neighborhoods, cannot meet the eligibility or minimum balance thresholds required to qualify for traditional bank accounts (e.g., checking and savings accounts) or simply do not want a traditional bank account. The convenience, pricing and security of GPR Cards is also attractive to many members of Generation Y (persons born in the 1980s and early 1990s), who see little use for the infrastructure of traditional bank branches and paper checks.

These cost-effective prepaid products save millions of dollars each year in disbursement costs and provide consumers a safe and reliable access point to the increasingly card-based financial system. If the Proposed Rule is finalized in its current form without many of the changes that we are suggesting, the NBPCA is concerned that consumers will not have access to many of the beneficial prepaid products that are in the market today. Many of the requirements in the Proposed Rule will greatly increase the cost of delivering Prepaid Accounts while limiting consumer choice as Prepaid Account products are eliminated from the market due to the increased administrative obligations and compliance costs.

We commend the Bureau staff for reaching out to the NBPCA, its member companies and other industry participants in order to better understand the prepaid industry prior to commencing the formal rulemaking process. The NBPCA and its members have previously met with the Bureau's staff to answer questions and explain the features, functionality and operation of the more than 15 different prepaid product segments currently available in the market. It is evident from the content of the Proposed Rule that the Bureau staff listened to both the industry and consumer groups, and has drafted a Proposed Rule that demonstrates an educated view of prepaid products and the operation of the prepaid marketplace.

The NBPCA also agrees with several of the key underpinnings of the Proposed Rule, including the following items in particular:

1) Prior to acquisition of a Prepaid Account, the material fees for using the Prepaid Account should be disclosed to the consumer, as is accomplished by the proposed short form disclosure.

2) Prepaid products that are treated by consumers as primary transaction accounts should be subject to the same Regulation E requirements that are currently applicable to "payroll card accounts" as defined in 12 CFR Part 1005.2(b)(2) (**"Payroll Card(s)"** or **"Payroll Card Account(s)"**). However, the NBPCA is not in agreement with the breadth of Prepaid Accounts covered by the Proposed Rule.

3) Limitation of liability and error resolution rights should be provided for prepaid accounts (a) when the consumer establishes an ongoing relationship with the provider and registers the account; or (b) when the prepaid account is a Payroll Card Account or a Government Benefit Account as defined under Regulation E. Currently, 12 CFR Part

[2] *See* 2013 FDIC National Study of Unbanked and Underbanked Households.

1005.15(a)(2) extends coverage to an account established by a government agency for distributing government benefits to a consumer electronically, but not for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency" (**"Government Benefit Card(s)"** or **"Government Benefit Card Account(s)"**).

4) Overdraft and credit features should continue to be allowed for prepaid products, but without the substantive requirements under Regulation Z which otherwise would effectively eliminate these features.

While there is much we can agree upon, the NBPCA has concerns with several of the policy positions taken by the Bureau in the Proposed Rule, which we explain in this Comment Letter. In addition, we have attached an Appendix which addressing the 100 questions to which the Bureau specifically requested responses.

COVERAGE OF THE PROPOSED RULE; DEFINITION OF PREPAID ACCOUNT

The May 2012 Advanced Notice of Proposed Rulemaking[3] (**"ANPR"**) sought comment, data and information from the public about GPR Cards. The Proposed Rule, however, goes well beyond GPR Cards and is much broader in scope than the ANPR. The Proposed Rule defines "Prepaid Account" to include, with certain limited exceptions, a card, code or other device established primarily for personal, household or family purposes and which (i) is issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter; and (ii) redeemable at multiple unaffiliated merchants for goods or services, usable at automated teller machines or usable for person-to-person transfers. While we generally agree with the Bureau that Prepaid Accounts that are used by consumers as primary transaction accounts should be covered by Regulation E, we disagree with the use of an overly broad definition of "Prepaid Accounts," that would include all types of Prepaid Accounts unless specifically carved out. The specific carve outs include (i) gift certificates; (ii) closed loop gift cards; (iii) loyalty, award and promotional cards; and (iv) general use prepaid cards that are both marketed and labeled as a gift card or gift certificate. This overly broad definition would include several products that, in the NBPCA's opinion, do not warrant the same kind of protections by the Bureau

In order to prevent products that do not warrant coverage from being brought within the scope of Regulation E, the NBPCA suggests adding the following exemptions to the definition of "Prepaid Accounts":

(i) any prepaid product otherwise covered by the Gift Card provisions of the Credit Card Accountability and Disclosure Act of 2009[4] (**"CARD Act"**) regardless of whether it is marketed and labeled as a "gift card";

(ii) any non-reloadable prepaid product exempt from the Gift Card provisions of the CARD Act that cannot be loaded, used or withdrawn in an amount greater than $1,000; and

[3] 77 Fed. Reg. 30923 (May 24, 2012).
[4] Pub. L. 111-24, 123 Stat. 1734 (codified as amended in scattered section of 15 U.S.C.S.)

(iii) Prepaid Accounts utilized for disaster relief or insurance proceeds disbursements, both of which are provided to consumers in emergency situations in which it is not feasible to provide the consumer with the full scope of disclosures required under the Proposed Rule.

These types of prepaid products do not warrant coverage under the Proposed Rule because consumers do not use them as primary transaction accounts. The burden of complying with the Proposed Rule may effectively remove these products from the prepaid marketplace.

PRE-ACQUISITION DISCLOSURES

While we agree that the material fees for using a Prepaid Account should be disclosed to consumers prior to acquisition, we do not think the mechanisms proposed in the rule will achieve that goal. With certain exceptions, the Proposed Rule requires an issuer to provide a consumer with both a short form fee disclosure and a long form fee disclosure prior to the acquisition of a Prepaid Account. In addition to those disclosures, a consumer will also receive a cardholder agreement, which will describe the terms and conditions of use, including the fees associated with using the product, and, in the case of Payroll Cards, any additional disclosures required under state law. The long form disclosure is simply redundant. Worse still, requiring issuers to provide consumers with yet another disclosure document will have the perverse effect of increasing both industry costs and consumer confusion. In contrast, the short form disclosure provides a handy reference tool for consumers, and is a welcome step forward. When coupled with the more detailed cardholder agreement, it provides consumers with complete, sufficient and manageable disclosure.

Long Form Disclosure

The Bureau itself made the following observation about the long form disclosure:

> "*The Bureau does not believe consumers would necessarily benefit from receiving only this long form disclosure before acquiring a [P]repaid [A]ccount. In the Bureau's testing, for example, many participants reported feeling overwhelmed by the amount of information included on a prototype long form and they struggled to compare two long form disclosures, even those that listed identical fee types. The Bureau believes that the potential size and complexity of the long form might overwhelm and lead consumers to disregard the disclosure and also not use it to comparison shop across products or even to evaluate a single product.*"[5]

In sharp contrast, the list of fees included in the static portion of the proposed short form disclosure were the fees relevant to the consumer's purchase decision:

> "*[W]hen participants in the Bureau's consumer testing saw longer lists of fees during testing, they frequently cited one of the fees included on the short form disclosure as that which would most influence their decision about which prepaid product to acquire. In other words, testing participants were not relying on the additional information in the long form*

[5] 79 Fed. Reg. 77150 (December 23, 2014).

> *disclosure to make a decision. The results suggest that the participants would have reached the same decision reviewing a short form disclosure.*"[6]

These findings support dispensing with the long form disclosure requirement altogether as the same information is already included in cardholder agreements. Alternatively, if the Bureau is not willing to retract the long form disclosure requirement, then the NBPCA would respectfully request that the long form disclosure should only be required to be distributed online, over the phone, or by request for a written copy.

Long form Disclosure – Retailer Exception

If the Bureau retains the long form disclosure requirement, we ask that the retail sales "agent" provision be removed. As drafted, the Proposed Rule would require any retailer offering one issuer's prepaid products "exclusively" to distribute a long form disclosure to a consumer before selling them a prepaid card. There is no principled distinction, from a consumer's perspective, between purchasing a prepaid product from a retailer that offers one issuer's products versus multiple issuers' products. The disclosure regime should be identical, regardless of where the consumer purchases his or her retail prepaid product. Indeed, the distinction between agents and non-agents of issuers is flawed for several reasons:

- First, retailers may not realize that they are distributing prepaid cards from a single issuer. Some financial institutions issue multiple Prepaid Account products through different program managers. As such, these products may be marketed with different branding and different features. It is not uncommon for a retailer to sell a variety of Prepaid Account products and not realize that they are issued by the same financial institution. Under the Proposed Rule, a retailer that sells two products issued by the same financial institution, without any type of exclusivity arrangement, would be unjustly excluded from the proposed definition of "retail location" even though it has provided its consumers multiple products to choose from. There is no logical reason for treating such a retailer differently from a retailer that offers cards from multiple issuers.

- Second, compelling a retailer to sell products from at least two different issuing financial institutions, which is the natural effect of the proposal, is unwieldy and will be difficult to enforce. For example, a retailer that runs out of prepaid card stock for one of its two issuers will cease to qualify for the exclusion, as currently proposed.

- Third, certain retailers are confined to a small geographic space (e.g. gas stations) or are not able to sell more than one product (e.g. mom-and-pop stores, remote retail locations, smaller chains) either because of high distribution cost-to-potential revenue ratios or disinterest in spending sales resources on small retail deals. Requiring a long form disclosure at these locations is arguably anticompetitive and will cause a disparate impact on smaller retailers, who may decide to simply stop selling prepaid products altogether, further reducing consumer access to Prepaid Accounts.

[6] 79 Fed. Reg. 77154 (December 23, 2014).

- Last, and most important, we believe the Bureau was appropriately sensitive to, and concerned about, space constraints imposed by requiring long form disclosures at retail locations. Those same concerns apply to all retail locations – whether or not they are an exclusive seller of one issuing financial institution's products. We believe that the proposed exclusion of certain stores from the definition of the term "retail locations" is artificial and does not reflect marketplace realities.

For all of the above stated reasons, the limitation on the retailer exception should be removed from the Proposed Rule, and all retailers should be allowed to use the alternate delivery methods for long form disclosures.

Short Form Disclosure

With respect to the short form disclosure requirement, the NBPCA has some additional concerns. The short form disclosure is required to have a static portion that includes certain fees that would have to be described for each Prepaid Account, including: (i) monthly or periodic fee; (ii) purchase fee; (iii) ATM withdrawal fee; (iv) cash reload fee; (v) ATM balance inquiry fee; (vi) customer service fee; and (vii) inactivity fee. The short form disclosure also requires the three most commonly incurred incidence-based fees for a particular Prepaid Account, which are not otherwise captured by the static fee categories. These incidence-based fees must be updated annually. The short form disclosure further requires the issuer to disclose the highest fee for each fee item, even if it is charged infrequently. Finally, the short forms for Payroll Cards and Government Benefit Cards are required to include specific compulsory use language at the top of the form, which we believe will be interpreted by consumers as a warning against using the products.

Short Form Disclosure – Restrictions on Certain Cardholder Fee Models and Limits Innovation. Our initial concern is that the short form disclosure does not contemplate certain fee models that are already available in the prepaid market today and the prescriptive nature of the short form disclosure will limit future innovation. One example is a GPR Card program sold by a large wireless company to the public that waives most of the cardholder fees for any consumer who is also a wireless customer of the program sponsor. In this example, the cost of using the product is not lower based upon *how the product is used* (as proposed for the short form disclosure), but *whether the cardholder is a customer of the program sponsor*. In fact, the proposed short form disclosure only anticipates two cardholder fee models – a monthly fee plan and a pay as you go fee plan.

While this type of loyalty program provides great consumer benefits, if the short form disclosure provided to consumers has to display the highest fees being paid by non-customers of the program sponsor, then the program sponsor will likely stop offering the program rather than explaining to consumers why the fee schedule included in the short form disclosure won't apply to that consumer. Consumers will likely find this explanation confusing or even misleading causing the program sponsor to abandon the program rather than deal with the associated consumer complaints.

Short Form Disclosure – Incidence-Based Fees. The Proposed Rule requires the disclosure of the three most commonly charged fees that are not otherwise captured with the other static fees included on the form. These incidence-based fees must be updated annually by the issuer. The Bureau has indicated that it is requiring the disclosure of incidence-based fees due to "concerns that

providers could simply change their fee structures to make their products appear less expensive relative to other products."[7] The NBPCA believes that this is an unwarranted concern in today's competitive marketplace. The Bureau itself has noted that "[i]n recent years, the GPR Card segment has grown increasingly competitive, which has resulted in a decrease in prices, coupled with an increase in transparency for many products."[8]

Of particular concern is the requirement to disclose incidence-based fees that will necessarily vary among different prepaid products. While the concept of selecting the three most frequently charged fees and including them on the short form disclosure might otherwise make sense, there are substantial drawbacks to this approach:

- First, this approach will be complex and difficult to implement. The incidence-based fee portion of the Proposed Rule will trigger numerous requirements on providers above and beyond merely placing the fee amounts on a disclosure document. Identifying and calculating the fees will be a major undertaking. The annual updating procedures alone create a massive amount of new procedures, controls, systems updates, and packaging/design changes. Furthermore, it isn't even clear what the Bureau considers to be a separate Prepaid Account product for purposes of calculating the incidence-based fees. According to the Proposed Rule, "*if a financial institution changes the name of its prepaid account product and develops a new marketing and distribution plan but does not alter the prepaid account's fee schedule, this would be considered a new prepaid account product for purposes of proposed § 1005.18(b)(2)(i)(B)(8)(II).*"[9] Based on this definition of Prepaid Account product, there will likely be thousands of separate Prepaid Account products in the market especially if the payroll card program for each individual employer must be treated as a separate Prepaid Account product under the Proposed Rule. If left unchanged, the costs of compliance with just this portion of the Proposed Rule would likely cause most providers to exit the prepaid marketplace.

- Second, incidence-based fees differ depending on how each cardholder uses the card. Incidence-based fee information might be useful for some, but often times such information only applies to a minority of cardholders.

- Third, and most importantly, the fact that different prepaid products will disclose different sets of incidence-based fees will be more misleading than current disclosures. The stated purpose of the short form disclosure is to encourage comparison shopping and consumer education.[10] If a particular incidence-based fee is disclosed on Package A, but is not listed on Package B or Package C, the consumer is left unable to make a meaningful comparison. The other two products might also charge the same type of fee, but at a higher or lower rate, and, depending on frequency, they might not be required to list such fee as an incidence-based fee under the Proposed Rule. The consumer might make the assumption that the particular incidence-based fee disclosed on Package A is not charged at all for the other two products, and that could be completely false.

[7] 77 Fed. Reg. 77149.
[8] 79 Fed. Reg. 77106 (December 23, 2014).
[9] 79 Fed. Reg. 77318.
[10] *See* 79 Fed. Reg. 77147.

- Fourth, our members believe that the requirement to update incidence-based fees annually is unnecessary because, absent a structural change in the program, the frequency of particular fees is unlikely to change significantly. Further, given that *all* fees are required to be included in the Card packaging materials, on the Bureau website, and on the card-issuer's website, this additional disclosure is simply redundant. And finally, giving the misleading nature of incidence-based fees in any event, there is no apparent benefit that a consumer would receive from an issuer undergoing this tortuous process of tracking and updating up to three incidence-based fees annually. Certainly no such benefit has been demonstrated in the Proposed Rule.

Instead, we invite the Bureau to simply select, based on its research, up to three additional fees commonly charged with respect to prepaid card accounts and require that those fees be included as a static disclosure similar to the other fees on the short form disclosure. This approach is simple, clear, instructive, easy to understand, and will further the Bureau's stated purpose of facilitating comparison shopping.

Short Form Disclosure - Highest Fee. Requiring disclosure of only the highest fee in the range will ultimately be misleading for many consumers – especially if the lower fee is more commonly charged and is easy for the consumer to take advantage of. We believe that some additional flexibility is appropriate. If space is available within the short form disclosure box, issuers should be permitted to disclose both the low and high fee for any fee type. If the space is not available, then issuers should have the ability to describe each fee as "up to $X".

Short Form Disclosure - Compulsory Use Language. Model Forms A-10(a) and (b) of the Proposed Rule require issuers of Government Benefit Cards and Payroll Cards, respectively, to include a statement on the top of the short form disclosure warning consumers that they do not have to receive payment through a prepaid card. The required disclosures read as follows.

- **Government Benefit Cards.** "*You do not have to get your payments on this prepaid card. Ask about other ways to get your payments.*"[11]

- **Payroll Cards.** "*You do not have to accept this payroll card. Ask your employer about other ways to get your wages.*" [12]

While the NBPCA strongly supports the rights of consumers to select their preferred method to receive their government benefits or wages from among the payment methods offered by the applicable government agency or employer that best fits their needs, the NBPCA believes the required warning, as proposed, may actually do more harm than good for consumers. Specifically, the NBPCA is concerned that the particular statement proposed by the Bureau would have a chilling effect on both Government Benefit Card and Payroll Card consumers. Any consumer receiving the short form disclosure with one of the required statements may be dubious about the reasons for including such a warning and come to the conclusion that a Government Benefit Card or Payroll Card, as applicable, is not a safe payment option, regardless of whether, in reality, it provides the greatest level of benefit to the consumer. Because of its potential to dissuade consumers from

[11] Model Form A-10(a).
[12] Model Form A-10(b).

selecting prepaid cards as a convenient and cost-effective method of government benefit or wage payment for themselves, the NBPCA urges the Bureau to revise the proposed Model Forms A-10(a) and (b) to include statements that are more positive and focused on consumer choice. Specifically the NBPCA proposes the following statements, which are more positive and alert the consumer to the fact that they have payment options, while mitigating the risk that the proposed statement could scare them away from choosing a Government Benefit Card or Payroll Card if that option is in their best interest.

Proposed Compulsory Use Statements:

- **Government Benefit Cards.** "*Prepaid Cards may be a convenient method to receive your benefit payments, but you do have options on how to get paid. Ask your benefit provider about other ways to get your payments.*"

- **Payroll Cards.** "*Payroll Cards may be a convenient method to receive your wages, but you do have options on how to get paid. Ask your employer about these options*."

LIMITATION OF LIABILITY AND ERROR RESOLUTION

The NBPCA is concerned about the extension of the provisional credit requirements to all Prepaid Accounts. Provisional crediting is an important issue for many NBPCA members due to the significant risks of fraud associated with provisional crediting. Specifically, the NBPCA points out that the nature of prepaid cards, and GPR Cards in particular, allows consumers to open and close accounts much more easily than traditional bank accounts with associated debit cards. In addition, GPR Cards can generally be obtained without undertaking credit checks. As such, the provisional credit requirements provide significant risks to GPR Card issuers. Because of the transitory nature of many GPR cardholders and the fact that the negative balances are often too small to justify collection costs, such negative balances are often written off as fraud losses. The experience of the NBPCA's members indicates that the aggregate amount of such losses increases as the time period shortens within which an issuer must provide provisional credit. In light of these concerns, the NBPCA urges the Bureau to consider limiting the provisional credit provisions to cardholders who have established an ongoing relationship with the card issuer. Such a relationship should be evidenced by the repeated electronic deposit of wages or government benefits to an account, coupled with registration of the account. For example, we believe the receipt of three or more ACH loads from the same remitter over a period of 70 continuous days to a registered account would constitute an on-going relationship and that such a consumer should be entitled to provisional credits.

Some may suggest extending the period for requiring provisional credit to 30 days. Such an extension should allow financial institutions enough time to research claims and detect potential fraud. This approach, however, should only apply to cardholders who do not have an ongoing relationship with a Prepaid Account issuer. As noted above, it makes sense to provide full provisional credit rights to cardholders with an ongoing customer relationship. Once a consumer has established an ongoing relationship with, the Prepaid Account issuer, then the consumer should receive the same benefits as bank account holders. If they do not have an ongoing relationship then, at a minimum, a 30-day waiting period should apply before provisional credit is provided.

OVERDRAFT AND CREDIT FEATURES

Intentional Overdrafts

The NBPCA does not believe that there is any compelling policy reason to treat prepaid cards (and associated account numbers) as credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan simply because the card issuer chooses from time to time to allow and pay a transaction that causes the cardholder's account balance to go negative or that is authorized when the account balance is negative.

The Bureau recognizes that, for at least some consumers, the lack of access to checking and other types of more established financial products and services appears to be the "key driver" of their use of GPR Cards.[13] The Bureau also notes that a number of consumers who use prepaid products with overdraft services voiced support for such services.[14]

The Bureau also recognizes that GPR Card providers that offer overdraft features generally charge lower fees than the fees charged by depository institutions or credit unions for checking or share account overdraft.[15] The Bureau notes further that certain issuers of prepaid products with overdraft services routinely (i) waive the overdraft fee if the consumer repays the overdraft quickly or if the overdraft is for a nominal amount; (ii) limit the number of permitted overdrafts in a month and the amount by which the account can go negative; and (iii) require a "cooling off" period after a consumer has incurred more than a specified number of overdrafts.[16]

The Bureau also understands consumers that currently use GPR Cards increasingly decide they no longer want to have traditional financial products and services such as a checking account.[17]

The NBPCA also notes that certain prepaid card programs are already subject to the Regulation E protections from unauthorized transactions, and these protections are often better than a consumer would receive with fraudulent checks. Under the Uniform Commercial Code (**"UCC"**), consumers can be liable for negligence contributing to forged check signatures or alterations.[18] Regulation E, in contrast, provides that consumer negligence cannot be used as the basis to impose greater liability than is permissible under Regulation E.[19] Likewise, if a consumer fails to identify the consumer's unauthorized signature or alteration of a check by the same wrongdoer, the consumer can be liable under the UCC for all checks forged or altered by that wrongdoer after 30 days.[20] Under Regulation E, the consumer's liability for unauthorized transactions resulting from the loss or theft of a debit card can never exceed the lesser of $500 or the sum of the unauthorized transfers that occur after the close of two business days after learning of such loss or theft and before the consumer notifies the Prepaid Account issuer, but even then only if the Prepaid Account issuer can establish that the unauthorized transfers would not have occurred had the consumer notified the Prepaid Account

[13] *See* 79 Fed. Reg. 77105 (December 23, 2014).
[14] *See* 79 Fed. Reg. 77205 (December 23, 2014).
[15] *See* 79 Fed. Reg. 77106 and 77111 (December 23, 2014).
[16] *See* 79 Fed. Reg. 77112 (December 23, 2014).
[17] *See* 79 Fed. Reg. 77106 (December 23, 2014).
[18] UCC 3-406.
[19] Regulation E Comment 1005.6(b)-1.
[20] UCC 4-406(d)(2).

issuer within two days after the loss or theft of the Prepaid Account. Card network "zero liability" policies also provide additional protections for unauthorized transactions involving network-branded prepaid products.

All of these factors suggest that GPR Cards should be encouraged as an alternative to checking accounts, yet the Bureau's proposal would greatly increase the burdens of Prepaid Accounts with overdraft features, thereby discouraging institutions from offering them and limiting consumer choice.

We recognize the Bureau's admirable aim of protecting consumers from potentially harmful financial products and services, but we believe this aim can be addressed without causing prepaid cards and account numbers to be credit cards or open-end (not home-secured) credit plans. For example, any of the following rules, together or in combination, could provide valuable consumer protections without altering the historical treatment of prepaid cards and associated account numbers:

- A rule that applies Regulation E protections to all Prepaid Accounts, by applying the Regulation E section 1005.18 standards that now apply to Payroll Card Accounts. As the Bureau notes, many program managers of GPR Card programs with overdraft or credit features already structure their products to comply with Regulation E's overdraft rules,[21] and the NBPCA believes that the majority of Prepaid Account issuers already voluntarily provide the Regulation E protections from unauthorized transactions.

- A requirement that consumers affirmatively opt-in to any overdraft feature, consistent with existing section 1005.17 of Regulation E.

- A cap on the number of overdraft fees in any month.

- A modest cap on the total amount that any account may be overdrawn, perhaps $150.

- A specific requirement that the card issuer prohibit those overdraft fees (or provide a refund) after the consumer has experienced a specified number of overdraft fees in a prescribed period, and a prohibition on overdraft fees on those transactions that cannot be stopped because they are due to "force-pay" transactions as described below.

- A requirement for detailed disclosures to the consumer, before the consumer opts-in, regarding (i) how the overdraft feature works; (ii) the amount of fees that may be charged for each overdraft transaction; (iii) the maximum number of fees that may be assessed on any single day, month or other stated period (or if there is no maximum, a statement to that effect); and (iv) a disclosure of the opt-in right and how to cancel an opt-in.

- A requirement to disclose the total amount of all overdraft fees charged for the monthly or other period when providing the consumer's account balance by telephone and with each electronic or written history provided under Regulation E.

[21] 79 Fed. Reg. 77112 (December 23, 2014).

- A requirement to disclose the total of all overdraft fees charged during the calendar year as part of each electronic or written history provided under Regulation E.

- Assuming that the force-pay issues described in this Comment Letter are corrected, in the case of intentional overdrafts or credit features, a prohibition on advertisements using the terms "safe", "no overdrafts", "no overdraft fees" or any similar terms that imply that the account cannot be overdrawn if overdraft fees may be imposed.

It is clear from the proposal that the Bureau is endeavoring to anticipate future product innovations, and trying to ensure that Prepaid Account issuers are not able to develop Prepaid Account products with credit features that circumvent regulatory protections (in this case, Regulation Z). We appreciate this concern on the part of the Bureau and agree that preventing circumvention of the applicable rules is important for consumers. However, if Prepaid Accounts with overdraft and credit features are subject to Regulation Z, we expect that these products will be completely eliminated from the prepaid marketplace. Furthermore, the NBPCA strongly believes that Prepaid Account programs with overdraft or credit features should remain subject to Regulation E with appropriate, common sense consumer protections that protect the availability of these extremely valuable and highly sought after consumer products.

Inadvertent Overdrafts / Force-Pay Transactions

The Bureau's definition of credit encompasses both (i) transactions that are authorized where the consumer has insufficient or unavailable funds in the Prepaid Account at the time of authorization; and (ii) transactions on a Prepaid Account where the consumer has insufficient or unavailable funds in the Prepaid Account at the time the transaction is paid. The NBPCA believes this broad definition, accompanied by the proposed new definition of "finance charge," will have the effect of causing all open-loop prepaid cards to involve credit, all open-loop prepaid cards to be credit cards, and all issuers of such cards to be creditors. Moreover, the NBPCA believes there is nothing prepaid card issuers could do to avoid that result. If the Proposed Rule is not substantially revised to avoid this result, some providers may be forced to exit the prepaid marketplace due to the substantial costs of compliance.

No issuer of open-loop prepaid cards can ensure that all transactions will be declined where the consumer has insufficient or unavailable funds, whether at the time of the transaction or when the transaction is paid, as discussed further below. This fact, coupled with the expanded definition of "finance charge," would have the effect of turning all open-loop prepaid cards into credit cards subject to all of the applicable Regulation Z requirements of the Proposed Rule.

Specifically, the proposed definition of finance charge would include:

> "*Any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.*"

Prepaid card issuers often charge transaction fees for at least some kinds of purchases or withdrawals, and the new definition of finance charge would cause those fees to be finance charges, even when the fee is exactly the same in amount as it would have been if the particular purchase or withdrawal would not have resulted in an overdraft.

We also note that the proposed definition of finance charge could be construed as applying to routine monthly fees. While we understand that the Bureau has stated informally that this is not the intent of the proposed rules, the proposed definition would include any charge "for credit availability," which on its face would seem to include any monthly fee for the availability of a prepaid account given that certain overdrafts on that account cannot be avoided. If it is not the Bureau's intent to treat monthly fees as finance charges in these circumstances, the NBPCA believes that it is crucial that the Bureau make that clear in the final rule or in related Official Interpretations.

It is important to note that issuers of open-loop prepaid cards are required by card network rules to pay all transactions that clear through the network and are presented to the issuer, absent merchant fraud or other narrow exceptions. The purpose of this rule is to provide confidence to merchants that debit and open-loop prepaid card transactions will be paid and the rule is therefore necessary to the functioning of the network payment system. While an issuer can know in some cases that a consumer is attempting to make a transaction with insufficient funds and decline the authorization for that transaction, there are many situations, known as "force-pay" transactions, where that is not possible. In fact, in the case of force-pay transactions, an account can become overdrawn despite all issuer precautions. For purposes of illustration, the following describes possible and common scenarios where a prepaid card account could become overdrawn despite neither the cardholder nor the card issuer intending to let that occur:

(i) Prepaid Card Used at a Gas Pump:

- A cardholder has an available balance of $60.00 and uses his or her card at an automated fuel pump.
- Pursuant to industry practice, the merchant submits a $1.00 pre-authorization to validate the card.
- The transaction is authorized because funds are sufficient for the pre-authorization amount and the additional amounts held by the issuer for the transaction.
- The cardholder purchases $70.00 worth of gas.
- Later that day, the merchant submits the full gas purchase amount. Because the purchase amount is more than $60.00, it would overdraw the account when posted.

(ii) Prepaid Card Used at a Restaurant:

- A cardholder has an available balance of $50.00 and uses his or her card at a restaurant.
- The merchant submits an authorization for $40.00 for the amount of the meal.
- The issuer adds another 20% ($8.00) to the transaction hold to account for a possible tip.

- Since funds are sufficient for the amount of a meal plus an estimated tip, the transaction is authorized.
- The cardholder leaves a 30% tip.
- The restaurant later settles the transaction for $52.00.
- The $52.00 transaction posts against the account and causes the balance to become overdrawn.

(iii) Delay in Settlement of any Prepaid Card Transaction:

- A cardholder makes a $200.00 prepaid card purchase and has sufficient funds ($250.00) at the time the transaction is authorized.
- The authorized amount is withheld from the customer's available balance as a pending transaction.
- There is a delay of several days for the merchant to submit the charge, which extends beyond the allowable time period for the issuer's authorization hold to remain on the account.
- The issuer releases the hold.
- The cardholder makes a $150.00 purchase, which quickly clears.
- When the original $200.00 transaction is finally received at the bank, funds are no longer sufficient because of the other posted activity, and the transaction overdraws the account by $50.00.

(iv) Provisional Credit from Merchant Dispute:

- A cardholder has a Prepaid Account balance of $50.00 in an account subject to Regulation E through the Treasury Federal Payments Rule, and the cardholder disputes a merchant charge of $20.00.
- The issuer grants a provisional credit of $20.00 while the dispute is being investigated, as is required by Regulation E when the issuer is unable to complete its investigation within 10 business days.
- The cardholder subsequently makes a purchase of $60.00 from a gas retailer while the cardholder account has a $70.00 balance (assumes no other loads or purchases/ATM withdrawals for purposes of example).
- The gas retailer settles the transaction for $60.00.
- The dispute is resolved in favor of the original merchant, and the $20.00 provisional credit is deducted from the cardholder's Prepaid Account balance five days after notice to the cardholder of the pending reversal of the credit.
- The posting of the reversal of the provisional credit against the account causes the balance to become negative $10.00.

(v) Dishonored Check Used to Load Card:

- A cardholder has a balance of $50.00 and deposits a $100 check into his or her account. The $100 is made available to the cardholder.
- The cardholder spends $60.00 using his or her card.

- The check used to load the additional $100.00 is not honored by the bank on which it is drawn.
- The dishonor of the check causes the consumer's Prepaid Account to be overdrawn by $10.00.

In light of these real world possibilities, which occur every day across America, unless an issuer opts to charge no fees whatsoever for a Prepaid Account and does not require consumer reimbursement for overdrafts, all open-loop prepaid cards would unavoidably become credit cards under the Bureau's proposed definitions of credit, credit card, and finance charge. All open-loop prepaid products would be subject to the Proposed Rule's requirements for Prepaid Accounts containing credit features and such a result would effectively destroy the open-loop prepaid card market. In light of this, the NBPCA asks the Bureau to revise the Proposed Rule to exempt all force-pay transactions, similar to those described above, from the Proposed Rule's requirements for Prepaid Accounts containing credit features. The NBPCA further asks the Bureau to exclude any transaction fee charged in the normal course of usage, and not specifically for the account going negative, from the definition of "finance charge."

Loan Proceeds Deposited to a Prepaid Account

The NBPCA believes that the Proposed Rule creates ambiguity regarding the Regulation Z treatment of prepaid cards and associated account numbers where a consumer arranges with a creditor to have funds from a loan or line of credit loaded to a Prepaid Account. We believe that the Bureau's intent is to treat such prepaid cards and account numbers as credit cards, or credit card accounts under an open-end (not home-secured) consumer credit plan, only where either (i) the Prepaid Account issuer is also the creditor and requires that funds from the loan or line of credit be deposited into a Prepaid Account specified by the card issuer; or (ii) a third party is the creditor but the prepaid card issuer has an arrangement with the creditor such that the funds from the loan or line of credit may only be deposited into a Prepaid Account specified by the card issuer. In particular, we believe that it is the Bureau's intent not to treat prepaid cards and associated account numbers as credit cards, or credit card accounts under an open-end (not home-secured) consumer credit plan, where the consumer arranges credit with a third party and chooses to have funds from the loan or line of credit deposited into the consumer's Prepaid Account. If this is not the Bureau's intent, the NBPCA urges the Bureau to reconsider the proposal for the reasons described below. If we are correct as to the Bureau's intent, we urge the Bureau to state this unequivocally either in the final rule or in related Official Interpretations so as to resolve any potential ambiguity.

The Bureau states in the Supplementary Information that the Proposed Rule would apply where credit is being "pulled" by a prepaid card, such as when a consumer uses the prepaid card at point of sale to access an overdraft plan, as well as where credit is being "pushed" to the Prepaid Account, such as where credit is accessed by an account number and the credit is deposited only into particular Prepaid Accounts specified by the creditor.[22] The Bureau also states that it is "not, however, intending to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds."[23] The Proposed Rule and Commentary, however, can easily be subject to a different interpretation.

[22] 79 Fed. Reg. 77213 (December 23, 2014).
[23] *Id*.

Existing and proposed Regulation Z define credit card to include any card, plate, or other single credit device that may be used "to obtain" credit.[24] Proposed Regulation Z defines credit card account under an open-end (not home secured) consumer credit plan as, with some exceptions, any open-end credit account that "is accessed" by a credit card.[25] Neither the proposed regulations nor the proposed Commentary defines "to obtain" credit or credit that "is accessed" by a credit card. As a result, if a consumer were to obtain a loan or line of credit and arrange for the loan or line of credit funds to be deposited into his or her Prepaid Account, a subsequent use of the prepaid card or account number for a purchase or withdrawal potentially could be interpreted as a use of the card or account number to "access" or "obtain" credit. If that is not the Bureau's intention, the NBPCA urges the Bureau to state that specifically in the final rule or in related Official Interpretations.

If it is the Bureau's intent that the above transaction will cause the prepaid card or associated account number to be a credit card or a credit card account under an open-end (not home secured) consumer credit plan, we strongly urge the Bureau to change this position in the final rule or in related Official Interpretations. It is crucial to recognize that a card issuer will not be able to control the consumer's choice or the consumer's arrangement with a third party creditor. No card issuer should be in the position of having the character of its prepaid cards and associated account numbers change as the result of the consumer's actions or the actions of a third party creditor without any affirmative action or knowledge of the Prepaid Account issuer.

This is equally a concern in the context of cards distributed by an institution of higher education for the purpose of disbursing student financial aid. The NBPCA understands that it is common for colleges and universities to deposit student loan funds as well as funds from tuition-assistance and grant programs into accounts specified by the student. The fact that the student arranges for loan funds to be deposited into a Prepaid Account should not cause that account (or associated number or prepaid card) to be a credit card or a credit card account under an open-end (not home secured) consumer credit plan. Moreover, we believe that the prepaid card issuer generally would have no ability to tell whether funds deposited by a college or university are credit funds or funds from tuition-assistance or grant programs.

To be clear, we are not discussing those situations where a prepaid card issuer enters into a formal relationship with a creditor for that creditor to make loans to the issuer's prepaid cardholders and to deposit loan or line of credit funds only into Prepaid Accounts held by the issuer. As discussed above, the NBPCA has also requested that the Bureau not treat prepaid cards (and associated account numbers) as credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan when the card issuer provides discretionary overdraft services. Even if the Bureau rejects the NBPCA's request in this regard, we believe that there is a fundamental difference between credit offered by the card issuer or by a third party under agreement with the card issuer, and credit offered by a third party where the consumer chooses where to direct the loan funds to be deposited.

[24] 12 C.F.R. § 1026.2(a)(15)(i).
[25] 12 C.F.R. § 1026.2(a)(15)(ii).

EFFECTIVE DATE

The NBPCA and its members have serious concerns about the proposed effective date of 9 months after publication of the final rule in the Federal Register. Based on the number of changes required for card packaging and websites, the level of software development necessary to calculate transactions and fees in the manner described in the Proposed Rule (which is vastly different that the current requirements under Regulation E), and the substantial operational changes that will be required in response to the final rule, our members believe that between 18 and 24 months is a much more appropriate time frame to implement the required changes from such a broad sweeping new regulation. Additionally, it should be noted that, concurrently, the industry is undergoing significant change related to the nationwide roll-out of EMV-enabled POS terminals and EMV-enabled cards. A longer implementation period will ensure that the industry has time to comprehensively implement any system and operational changes required under the final rule, as well as to avoid destroying millions of card packages that have already been produced and are out in the market.

APPENDIX 1 - QUESTION-BY-QUESTION RESPONSES

In addition to the comments above, we are providing a detailed response to each of the specific requests for comment contained in the Proposed Rule both by topic and specific type of prepaid product. Please see Appendix 1 attached to this Comment Letter for those detailed responses.

[Signatures Appear on Following Page]

CONCLUSION

The NBPCA appreciates the opportunity to comment on 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). While the NBPCA supports the Bureau's efforts to draft common sense rules for the prepaid industry and we applaud the Bureau's efforts to draft a comprehensive Proposed Rule that demonstrates an educated view of prepaid products, we have several concerns with the Proposed Rule which are outlined in this Comment Letter. We look forward to working closely with the Bureau to develop the final rule in a manner that both benefits consumers and the industry's ability to continue to provide these tremendously beneficial products. If you have any questions or require further information, please do not hesitate to contact us.

Sincerely,

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APPENDIX 1

SPECIFIC RESPONSES TO REQUEST FOR COMMENT BY TOPIC AND PRODUCT TYPE

We have structured this Appendix to the comment letter in order to address the specific requests for comments inserted into the Proposed Rule both by topic and specific type of prepaid product. Although not called out separately, questions 1 through 51 generally apply to GPR Card accounts (as well as other types of Prepaid Accounts).

I. DEFINITIONS

A. Definition of "Prepaid Account"

1. The Bureau seeks comments on the definition of "Prepaid Account", specifically whether there are specific types of prepaid products that should be included or excluded from coverage, as well as the rationale for inclusion or exclusion, and any unintended consequences of including products that do not warrant protection by the Bureau. [79 Fed. Reg. 77129]

Response – As noted above, the NBPCA believes the definition of "Prepaid Account" is overly broad and will include several products that do not warrant coverage and would limit innovation due to the barriers of entry arising from the potential compliance costs.

In order to prevent products that do not warrant coverage from being brought within the scope of Regulation E, the NBPCA suggests adding the following exemptions to the definition of "Prepaid Accounts":

(i) any prepaid product otherwise covered by the Gift Card provisions of the CARD Act regardless of whether it is marketed and labeled as a "gift card";

(ii) any non-reloadable prepaid product exempt from the Gift Card provisions of the CARD Act that cannot be loaded, used or withdrawn in an amount greater than $1,000; and

(iii) Prepaid Accounts utilized for disaster relief or insurance proceeds disbursements, both of which are provided to consumers in emergency situations in which it is not feasible to provide the consumer with the full scope of disclosures required under the Proposed Rule

These types of prepaid products do not warrant coverage under the Proposed Rule because consumers do not use them as primary transaction accounts. The burden of complying with the Proposed Rule may effectively remove these products from the prepaid marketplace.

2. The Bureau seeks comment as to whether P2P payment products warrant inclusion within the proposed definition of "Prepaid Account", understanding that a P2P payment product must satisfy the other requirements of the proposed rule to be considered a Prepaid Account. [79 Fed. Reg. 77131]

Response – The NBPCA believes P2P payment products should only be included within the definition of "Prepaid Account" if they are not otherwise covered under the Gift Card provisions of the CARD Act or Remittance Transfer Rule (**"RTR"**). To explain, any cross border remittance service that allows a one-time use, temporary account where funds may reside until the sender selects the beneficiary will already comply with the RTR. Moreover, any coverage of such temporary self-use account under the final rule would be conflicting, overly cumbersome and result in less consumer convenience without any corresponding consumer benefit.

3. The Bureau seeks comment on whether it would be appropriate to impose the provisions in this proposal on some or all types of gift cards, the nature of consumer harm with respect to gift cards, and whether the Bureau's understanding of gift cards as discussed herein is accurate. [79 Fed. Reg. 77131-32]

Response – The NBPCA agrees with the Bureau that it is not appropriate to include gift cards and other products that already comply with the Gift Card provisions of the CARD Act within the scope of the Proposed Rule.

4. The Bureau seeks comment as to whether to maintain a separate definition for "payroll account" as a standalone sub-definition of "Prepaid Account." [79 Fed. Reg. 77132]

Response – Given the unique features and laws applicable to Payroll Cards and the fact that many state laws incorporate the federal "Payroll Card" definition by reference, the NBPCA supports the maintenance of a separate definition for "Payroll Card Account" as a standalone sub-definition of "Prepaid Account". The NBPCA refers the reader to Section IV herein for a more detailed discussion on this issue.

5. The Bureau seeks comment as to whether to maintain a separate definition for "Government Benefit Card Account" as a standalone sub-definition of "Prepaid Account." [79 Fed. Reg. 77132]

Response – Given the unique features and laws applicable to Government Benefit Cards, the NBPCA supports the maintenance of a separate definition for "Government Benefit Card Account" as a standalone sub-definition of "Prepaid Account". The NBPCA refers the reader to Section V herein for a more detailed discussion on this issue.

6. The Bureau seeks comment on whether health savings accounts, flexible spending accounts and medical savings accounts, and health reimbursement arrangements or other types of health care and employee benefit accounts should be included within the definition of "Prepaid Account". [79 Fed. Reg. 77132-33]

Response – The NBPCA refers the reader to Section VII herein for a more detailed discussion on this issue.

7. The Bureau seeks comment on the scope of its proposed definition for the term "Prepaid Account" as it might relate to virtual wallets and virtual currency products. [79 Fed. Reg. 77133]

Response – The NBPCA agrees with the Bureau's approach that only those virtual wallets that store and access funds– as opposed to wallets that access other financial products – should be considered a Prepaid Account. The NBPCA stresses again that to the extent any virtual wallet storing funds complies with the Gift Card provisions of the CARD Act, then it should be excluded from the Proposed Rule.

B. Definition of "Financial Institution"

8. The Bureau seeks comment on the proposed modification to § 1005.18(a) to state that a financial institution shall comply with all applicable requirements of the EFTA and Regulation E with respect to Prepaid Accounts except as modified by proposed § 1005.18. [79 Fed. Reg. 77146]

Response – Coverage under the EFTA and Regulation E for GPR Card products has long been anticipated (other than the overly broad definition of Prepaid Account). Consequently, the NBPCA does not have any comment with respect to the general terms of Part 1005.18(a). However, the Official Interpretations to Part 1005.18(a) raise concerns with respect to certain distribution channels used to distribute prepaid cards. Specifically, we would appreciate clarification that Regulation E would not apply to open loop prepaid products distributed for commercial purposes (e.g., fleet/fuel cards, corporate expense cards) because they are not provided for personal, family or household purposes.

Comment 1 – We agree that it is appropriate under Comment 1 to Part 1005.18(a) to address coverage of Prepaid Accounts requested by consumers through a retail store or via telephone or online. However, the comment does not appear to contemplate the many instances in which a consumer may receive an access device that is not activated and/or not loaded with funds, and with which the consumer has a choice whether or not to activate it for use as a Prepaid Account. We seek clarification that the mere distribution of a prepaid access device should *not* be considered the issuance of an unsolicited access device unless and until it is activated.

These kinds of scenarios often happen with Prepaid Accounts. For example, many Government Benefit Cards or disaster relief cards are distributed to consumers who may then elect whether or not to activate and receive payments with the card. Payroll Cards can also be distributed to employees in an unactivated format; such method of distribution has already been approved by the Bureau.[26] Similarly, there are student programs in which standard university ID cards (which happen to have a magnetic strip) are distributed to students. The magnetic strip allows the card to be converted into a Prepaid Account, if the student elects to have the card activated for such use, via

[26] *See* Letter from Richard Cordray to Senators Blumenthal, Manchin III, and Schumer, dated September 12, 2013, citing 12 CFR 1005.5(b) and 71 Fed. Reg. 51437, 51442 (Aug. 30, 2006)(Stating that the practice of handing out inactive cards to employees is acceptable, so long as the cards are accompanied by the terms and conditions of the account and, so long as employees retain the option to receive compensation by other means.); *See also* 71 Fed. Reg. 51437, 51442 (Aug. 30, 2006): "One commenter asked the Board to clarify whether an employer may include an unactivated payroll card with materials provided to employees about the terms and conditions of the payroll card account. Such a procedure would not violate Regulation E, provided that the terms and conditions for issuing an unsolicited access device as provided under § 205.5(b) are satisfied and the consumer retained the option to receive compensation by means other than the payroll card account."

telephone or online. However, unless and until the student elects to activate the card to use it as a Prepaid Account, it is just a student ID card (or library card or dormitory access card) without payment functionality and should not be subject to the Proposed Rule.

We request that the Bureau clarify that the distribution of unactivated prepaid access devices such as Government Benefit Cards, disaster relief cards, Payroll Cards, and student ID cards would not be deemed the issuance of an unsolicited access device, so long as the consumer has the option to not activate the access device and to receive their payments through a different payment method. We believe that Comment 1 to Part 1005.18(a) should be expanded to clarify that the consumer would be deemed to request such an access device when the consumer calls or goes online to activate and/or load funds to the Prepaid Account.[27]

Comment 2 - We agree that neither an employer nor a third-party service provider should be deemed a "financial institution" under Part 1005 because they do not issue cards or hold a Prepaid Account. However, Comment 2 to Part 1005.18(a) also suggests that in order to avoid being deemed a "financial institution" under Regulation E, such entities must not "agree with consumers to provide EFT services in connection with Prepaid Accounts." It is unclear what this statement is intended to address, and we recommend that this language be deleted to avoid confusion. Third-party service providers may be a party to the cardholder agreement or provide some aspect of an EFT service (e.g., as a vendor or contractor for the issuing bank). We do not think a third-party service provider who is providing services on behalf of an issuing bank in connection with Prepaid Accounts should be deemed a "financial institution" for purposes of Regulation E provided they do not also hold the Prepaid Account or issue prepaid cards.

II. DISCLOSURE REQUIREMENTS FOR PREPAID ACCOUNTS

9. The Bureau seeks comment on (a) the proposed disclosure approach, in particular (b) the utility of including category headings as part of the short form and incorporating an "all-in" summary fee concept, (c) whether any disclosure alternatives would be more appropriate than the Bureau's proposed disclosure regime, and (d) whether a regime that requires a disclosure prior to acquisition is necessary. [79 Fed. Reg. 77151]

Response –

a. The Bureau's Proposed Approach.

The NBPCA appreciates the Bureau's efforts to provide clear and consistent disclosures to consumers acquiring prepaid cards. However, we find these proposed disclosure provisions to be among the most troubling portions of the Proposed Rule for issuers of Prepaid Accounts to implement effectively. In particular, we believe that requiring both a short form disclosure and a long form disclosure prior to "acquisition" of the Prepaid Account, the incidence-based fee requirements in the short form disclosure, and the limitations on the retail exemption for the pre-acquisition long form disclosure will provide few additional protections to consumers while requiring industry participants to implement costly and burdensome processes and procedures. We

[27] In connection with this comment, we suggest that the examples of pre-acquisition disclosures under Comment 1 to Part 1005.18(b)(1)(i) be expanded to include examples of cards being distributed prior to activation without being deemed to be the issuance of "unsolicited access devices."

also believe that the Proposed Rule does not provide for a sufficient compliance period given the significant changes that will be required for systems and processes throughout the Prepaid Account distribution chain. Our concerns regarding each of these issues are set forth in more detail in individual responses below. With regard to the required provision of a short form disclosure and long form disclosure, however, we believe that the short form disclosure (with some amendments - see below) standing alone provides consumers with all the information reasonably necessary to make an informed decision whether to acquire a prepaid card and therefore recommend that the Bureau eliminate the long form disclosure requirement in the Proposed Rule.

The Bureau's Proposed Rule itself provides many reasons why the long form pre-acquisition disclosure should be dispensed with entirely:

- The long form disclosures will be posted on the Bureau's website and will be available on the Prepaid Account issuer's website;
- Consumers who tested the long form disclosure reported "feeling overwhelmed" by the amount of information included on a prototype long form;[28]
- Consumers who tested the long form disclosure found it difficult to compare long form disclosures and indicated that they would not rely on the data in the long form disclosure when making purchasing decisions;
- Regulation E already requires that consumers be provided all applicable fee information before they can use a card;
- Pre-acquisition long form disclosures are not standard with respect to any other payment products of which we are aware;
- Requiring pre-acquisition long form disclosures would impose a "significant cost" to the industry.[29]

It is important to note that the Bureau has already recognized that requiring written pre-acquisition long form disclosures provides little benefit in a retail sales situation. Certainly the same reasoning would apply equally in other contexts, such as distribution of Payroll Cards, Government Benefit Cards and Student Cards (as defined in Section VI below).

To be clear, the NBPCA endorses providing consumers with full access to all fees and all terms when they receive a Prepaid Account and before they use a Prepaid Account. For example, we believe that cardholders should be able to bring home and study the full list of fees/terms when they receive a Prepaid Account. The only question is whether they need full access *pre-acquisition*. We believe they do not since (i) relevant and material fee information will be provided pre-acquisition in the short form disclosure; and (ii) a cardholder can typically obtain a full refund of the purchase fee (if any) post-acquisition.

[28] *See* 79 Fed. Reg. 77150 (December 23, 2014).
[29] *Id*.

Given that any additional consumer benefit from providing the pre-acquisition long form disclosures appears (even based on the text of the Proposed Rule) to be unproven, and given that it is acknowledged that the costs of complying would be significant, we respectfully request that only the short form disclosures be required regardless of the type of Prepaid Account involved, and the method of prepaid card distribution.

To the extent the Bureau is concerned that a consumer will be unable to determine that the card does not meet his or her needs until after a purchase fee has been paid, we recommend that such a consumer be permitted to obtain a full refund of the purchase fee. Such an approach would protect consumer interests without imposing an undue burden on prepaid card issuers.

b. Category Headings and "All-In" Summary Fee Concept.

While many industry participants have adopted the "category" approach, we believe the approach taken by the Bureau – without using category headings – is acceptable. We also fully agree that the "all-in" summary fee concept does not work for the reasons identified in the Proposed Rule and should not be included in the required pre-acquisition disclosures.

c. Disclosure Alternatives.

The NBPCA urges the Bureau to consider requiring only a "short form" pre-acquisition disclosure (provided certain requested changes are made in the short form as discussed below) and not the long form disclosure. We also note that prepaid card short form disclosures will include the issuer's URLs, and many prepaid card packages also display QR codes (or similar codes that can be read by smart phones) in order to provide consumers with an easy way to access the full terms and conditions.

d. Necessity of Pre-acquisition Disclosure Regime.

The NBPCA has long supported pre-acquisition disclosures of key terms and fees, provided such disclosures are easy to read and understand and are flexible enough to permit consumers to have the choice of a wide range of products. We believe the proposed short form disclosures (subject to the changes noted below in response to Question 18) will fulfill these requirements.

10. The Bureau seeks comment on the proposal to require that all fees be disclosed, not just fees charged for electronic fund transfers. [79 Fed. Reg. 77186]

Response – The NBPCA has long supported full disclosure of all material fees for using a Prepaid Account and not just those charged for electronic fund transfers. The NBPCA believes, however, that disclosure of fees should be limited to the extent that such fees can be determined by an issuer in advance. For example, a provider of an ATM that a prepaid card consumer decides to use may charge a fee even if no transaction is completed. Such a fee would be outside the prepaid card issuer's control and thus the issuer could not determine the fee in advance. In light of this, the NBPCA asks the Bureau to provide some flexibility to issuers attempting to address fees in a disclosure that are outside the issuer's control. As an example, the NBPCA suggests that the Bureau could allow issuers to include a form disclaimer regarding such outside fees on the short form disclosure or an example to show to the consumer when such an outside fee may occur.

11. The Bureau seeks comments on all aspects of its proposal to mandate pre-acquisition disclosures. In particular, the Bureau solicits feedback on whether pre-acquisition disclosures are necessary or if the fee information provided pursuant to existing § 1005.7(b) (as modified by proposed § 1005.18(f)) at the time a consumer contracts for the Prepaid Account is sufficient to inform consumers about the account's terms and conditions. [79 Fed. Reg. 77152]

Response – As noted above, the NBPCA believes that the Bureau's proposed pre-acquisition short form disclosures (as modified below) are reasonable and sufficient to inform consumers about the Prepaid Account's terms and conditions. We do not believe the pre-acquisition long form disclosure is necessary and provides little incremental benefit to consumers while imposing significant additional burdens on industry participants. We are concerned that the overall cost of providing prepaid cards will be increased by mandating pre-acquisition long form disclosures and will result in higher fees to consumers. In addition, state law may require the disclosure of fees and other terms for an account which could be inconsistent or duplicative of the proposed requirement (e.g., in the Payroll Card context). The existing rules set forth in § 1005.7(b), as modified by proposed § 1005.18(f), will be sufficient to inform consumers about all fees and terms applicable to Prepaid Accounts.

12. The Bureau seeks comment on whether additional guidance is necessary regarding how electronic disclosures can be provided in compliance with the pre-acquisition timing requirement in proposed § 1005.18(b)(1)(i). [79 Fed. Reg. 77153]

Response – With respect to Comment 2 to proposed § 18(b)(1)(i), the guidance is clear regarding disclosures on bank websites. However, with the growth of electronic payment products available in market such as an application on a smart phone or other electronic devices (including "wearables"), it will be increasingly important to understand how the Bureau expects required electronic disclosures to be displayed, as there is currently very little guidance on this point. Industry participants, together with our technology vendors, would be happy to meet with the Bureau in order to explore a range of methods that may be used to provide such disclosures in a way that is both meaningful and easy to understand.

13. The Bureau seeks comment on whether technology exists that could be implemented by all potentially covered entities and that would permit them to confirm a consumer has read online disclosures, or if providing guidance that a consumer should not be able to easily bypass the pre-acquisition disclosures would ensure that consumers have sufficient opportunity to review disclosures provided electronically. [79 Fed. Reg. 77153]

Response – We are not aware of technology that is capable of confirming that a consumer has actually read disclosures, and in our view, such requirements potentially raise consumer privacy concerns and should not be mandated by regulators. Many important disclosures – such as pharmaceutical and automotive disclosures – are provided to consumers by a business provider, but the business provider is not required to compel the consumer to read it or confirm that a consumer has read them. A "click to accept" approach for terms, conditions, and disclosures is an accepted practice globally, across industries, and we believe such an approach is appropriate and sufficient for Prepaid Accounts. Additionally, it would be useful for the Bureau to confirm that an issuer does not have to maintain records as evidence that a consumer has read the disclosures. As noted in

existing Comment 13(b), having a clear process in place that provides full and easy access to applicable terms should be sufficient.

14. The Bureau seeks comment on whether retailers that use packaging material, but do not make it directly accessible to consumers, actually face space constraints that justify allowing them to disclose the long form post-acquisition. [79 Fed. Reg. 77153]

Response – The approach set forth in the Proposed Rule for Prepaid Accounts sold in retail locations generally is fair and reasonable, although we have concerns about an issuer's ability to disclose additional information that is of importance to consumers as further discussed below. We agree that the information required to be included in the short form disclosure (as discussed below) should be easily visible to the consumer. We also agree that a URL and toll-free phone number should be displayed on the package so that consumers can access additional information. As noted above, however, we strongly urge reconsideration regarding the requirement for a pre-acquisition long form disclosure provided that all disclosures, including all fees and other Regulation E required disclosures, are provided before the Prepaid Account can be used. The same process for cards sold in retail locations should apply to all Prepaid Accounts (including Payroll Cards, Government Benefit Cards and Student Cards) and should apply no matter where or how the cards are sold or distributed. Such a uniform approach is simple, efficient and easier for consumers to compare and understand.

15. The Bureau seeks comment on all aspects of this approach to fee disclosures for Prepaid Accounts sold in retail locations, specifically what information consumers should receive when shopping for a Prepaid Account and how comprehensive this information could be, whether to require disclosure of the long form pre-acquisition in retail stores instead of permitting financial institutions to only make it accessible to a consumer, and whether the two methods (website or telephone number) are reliable ways for consumers to access the long form disclosure when shopping in a retail store. [79 Fed. Reg. 77154-55]

Response – For the reasons stated elsewhere in this letter, the NBPCA believes the Bureau should dispense with pre-acquisition long form disclosures entirely. However, if the Bureau retains the long form disclosure requirement, we ask that the retail sales "agent" provision be removed. As drafted, the Proposed Rule would require any retailer offering one issuer's prepaid products "exclusively" to distribute a long form disclosure to a consumer before selling them a prepaid card. There is no principled distinction, from a consumer's perspective, between purchasing a prepaid product from a retailer that offers one issuer's products versus multiple issuers' products. The disclosure regime should be identical, regardless of where the consumer purchases his or her retail prepaid product. Indeed, the distinction between agents and non-agents of issuers is flawed for several reasons:

- First, retailers may not realize that they are distributing prepaid cards from a single issuer. Some financial institutions issue multiple Prepaid Account products through different program managers. As such, these products may be marketed with different branding and different features. It is not uncommon for a retailer to sell a variety of Prepaid Account products and not realize that they are issued by the same financial institution. Under the Proposed Rule, a retailer that sells two products issued by the same financial institution, without any type of exclusivity arrangement, would be unjustly excluded from the proposed

definition of "retail location" even though it has provided its consumers multiple products to choose from. There is no logical reason for treating such a retailer differently from a retailer that offers cards from multiple issuers.

- Second, compelling a retailer to sell products from at least two different issuing financial institutions, which is the natural effect of the proposal, is unwieldy and will be difficult to enforce. For example, a retailer that runs out of prepaid card stock for one of its two issuers will cease to qualify for the exclusion, as currently proposed.

- Third, certain retailers are confined to a small geographic space (e.g. gas stations) or are not able to sell more than one product (e.g. mom-and-pop stores, remote retail locations, smaller chains) either because of high distribution cost-to-potential revenue ratios or disinterest in spending sales resources on small retail deals. Requiring a long form disclosure at these locations is arguably anticompetitive and will cause a disparate impact on smaller retailers, who may decide to simply stop selling prepaid products altogether, further reducing consumer access to Prepaid Accounts.

- Last, and most important, we believe the Bureau was appropriately sensitive to, and concerned about, space constraints imposed by requiring long form disclosures at retail locations. Those same concerns apply to all retail locations – whether or not they are an exclusive seller of one issuing financial institution's products. We believe that the proposed exclusion of certain stores from the definition of the term "retail locations" is artificial and does not reflect marketplace realities.

For all of the above stated reasons, the limitations on the retailer exception should be removed from the Proposed Rule, and all retailers should be allowed to use the alternate delivery methods for long form disclosures.

16. The Bureau seeks comment on whether agents of the financial institution face space constraints in retail stores that would make it difficult to provide the short form and long form disclosures pre-acquisition. [79 Fed. Reg. 77155]

Response – Yes. Given the increased pressure on retail margins, and the high cost of retail space, the same constraints exist for all retail stores whether they are agents of financial institutions or not. We would recommend that the exception for retail locations that are exclusive agents of financial institutions be removed from the Proposed Rule. To the extent the retail store is a general retailer that sells both financial and non-financial products, then the product will likely be sold on a j-hook; under such circumstances, it is extremely difficult for the retailer to provide those long form disclosures pre-acquisition. Some of our members have also expressed many of the same concerns about space constraints with Prepaid Accounts being distributed at bank branch locations and recommend that there should be a level playing field for retailers and non-retailers when it comes to the distribution of the long form disclosure. In fact, throughout this Comment Letter, we have suggested repeatedly that the long form disclosure requirement be eliminated or, at a minimum, only be required to be made available online or over the phone pre-acquisition.

17. The Bureau seeks comment on whether consumers will benefit from hearing the contents of only the short form disclosed orally. [79 Fed. Reg. 77156]

Response – The NBPCA generally agrees with the suggested approach for oral/telephonic sales or distribution of Prepaid Accounts. Certainly, for all the reasons stated above, disclosing solely the short form disclosure requirements during a telephone call is a reasonable and fair approach.

18. The Bureau seeks comment on all aspects of the short form disclosure proposal. Specifically, the Bureau solicits feedback on (a) whether mandating disclosure of inapplicable features on the short form disclosure would be unnecessarily confusing to consumers or whether financial institutions will find it difficult to explain elsewhere on a Prepaid Account access device's packaging material or on their websites that certain features may not be available, (b) whether only providing the highest fee on the short form disclosure for a given fee type will be misleading to consumers, (c) the proposed type and number of fees included in the top line portion of the form, and (d) whether the cost of purchasing or activating a Prepaid Account should be included on the short form disclosure. [79 Fed. Reg. 77158]

Response –

a. <u>Disclosure of Inapplicable Features</u>.

The NBPCA questions the utility of mandating disclosures of inapplicable fees. However, we understand that certain fees are important to consumers, and for those fees (e.g., monthly fees, ATM fees) we acknowledge that the requirement makes sense. However, we believe it is important that instead of indicating "no fee" when the service or feature involved is not offered, the short form disclosure should allow institutions to plainly indicate that the feature is not provided.

Additionally, the NBPCA has concerns that the short form disclosure does not contemplate certain fee models that are already available in the prepaid market today and the prescriptive nature of the short form disclosure will likely limit future innovation. One example is a GPR Card program sold by a large wireless company to the public which waives most of the cardholder fees for any consumer who is also a wireless customer of the program sponsor. In this example, the cost of using the product is not lower based upon *how the product is used* (as proposed for the short form disclosure), but *whether the cardholder is a customer of the program sponsor*. In fact, the proposed short form disclosure only anticipates two cardholder fee models – a monthly fee plan and a pay as you go fee plan.

While this type of loyalty program provides great consumer benefits, if the short form disclosure provided to consumers has to display the highest fees being paid by non-customers of the program sponsor, then the program sponsor will likely stop offering the program rather than explaining to consumers why the fee schedule included in the short form disclosure will not apply to that consumer. Consumers will likely find this explanation confusing or even misleading causing the program sponsor to abandon the program rather than deal with the associated consumer complaints.

b. Whether Providing the Highest Fee will be Misleading.

We have some concerns that requiring disclosure of only the highest fee in the range will ultimately be misleading for many consumers – especially if the lower fee is more commonly charged and is easily achievable. Indicating "*up to* $X" would be clear and relevant, more so than the proposed footnote. In addition, it appears that should an issuer have the room and ability to disclose both the low and high end of the range within the short form disclosure or provide any initial services at no cost to the consumer, the current language would not permit such disclosure. We believe some more flexibility would be appropriate. Provided space is available within the disclosure box, issuers should be permitted to disclose both the low and high fee. If the space is not available, then we agree that solely the highest fee should be disclosed as "up to $X".

c. Type and Number of Fees Included in Top-Line Disclosures.

The NBPCA generally supports the type and number of fees included in the short form disclosures, assuming, however, that the Bureau limits the scope to those reloadable products that consumers use as primary transaction accounts. To require products that typically only have one activation or purchase fee to disclose a number of inapplicable fees and make statements in the negative seems at best irrelevant and could potentially be misleading. Of particular concern is the requirement to disclose incidence-based fees that will necessarily vary among different prepaid products. While the concept of selecting the three most frequently charged fees and including them on the short form might otherwise make sense, there are substantial drawbacks to this approach:

- First, this approach will be complex and difficult to implement. The incidence-based fee portion of the Proposed Rule will trigger numerous requirements on providers above and beyond merely placing the fee amounts on a disclosure document. Identifying and calculating the fees will be a major undertaking. The annual updating procedures alone create a massive amount of new procedures, controls, systems updates, and packaging/design changes. Furthermore, it isn't even clear what the Bureau considers to be a separate Prepaid Account product for purposes of calculating the incidence-based fees. According to the Proposed Rule, '*if a financial institution changes the name of its prepaid account product and develops a new marketing and distribution plan but does not alter the prepaid account's fee schedule, this would be considered a new prepaid account product for purposes of proposed § 1005.18(b)(2)(i)(B)(8)(II).*"[30] Based on this definition of Prepaid Account product, there will likely be thousands of separate Prepaid Account products in the market especially if the payroll card program for each individual employer must be treated as a separate Prepaid Account product under the Proposed Rule. If left unchanged, the costs of compliance with just this portion of the Proposed Rule would likely cause most providers to exit the prepaid marketplace.

- Second, incidence-based fees differ depending on how each cardholder uses the card. Incidence-based fee information might be useful for some, but often times such information only applies to a minority of cardholders.

[30] 79 Fed. Reg. 77318.

- Third, and most importantly, the fact that different prepaid products will disclose different sets of incidence-based fees will be misleading than current disclosures. The stated purpose of the short form disclosure is to encourage comparison shopping and consumer education.[31] If a particular incidence-based fee is disclosed on Package A, but is not listed on Package B or Package C, the consumer is left unable to make a meaningful comparison. The other two products might also charge the same type of fee, but at a higher or lower rate, and, depending on frequency, they might not be required to list such fee as an incidence-based fee under the Proposed Rule. The consumer might make the assumption that the particular incidence-based fee disclosed on Package A is not charged at all for the other two products, which may be completely false.

- Fourth, our members believe that the requirement to update incidence-based fees annually is unnecessary because, absent a structural change in the program, the frequency of particular fees is unlikely to change significantly yet an issuer would be required to do a new re-assessment every 12 months. Further, given that *all* fees are required to be included in the Card packaging materials, on the Bureau website, and on the card-issuer's website, this additional disclosure is simply redundant. And finally, giving the misleading nature of incidence-based fees in any event, there is no apparent benefit that a consumer would receive from an issuer undergoing this tortuous process of tracking and updating up to three incidence-based fees annually. Certainly no such benefit has been demonstrated in the Proposed Rule.

Instead, we invite the Bureau to simply select, based on its research, up to three additional fees commonly charged with respect to prepaid card accounts and require that those fees be included as a static disclosure similar to the other fees on the short form disclosure. This approach is simple, clear, instructive, easy to understand, and will further the Bureau's stated purpose of facilitating comparison shopping.

On a final note, we are concerned about the number of times that it is suggested in the Proposed Rule that a particular approach to a requirement was taken because of the strong potential for misconduct by the industry and the need to prevent circumvention by industry. We are struggling to understand the source of this misperception. However, if this is truly a concern, we suggest that any such concerns or bad acts could be addressed by the Bureau pursuant its authority to prevent unfair, deceptive, or abusive acts or practices (**"UDAAP"**)[32].

d. Cost of Purchasing or Activating a Prepaid Account.

The NBPCA notes that the fees for purchasing and activating a Prepaid Account are two very different things. A purchase fee is paid at the point of sale, simply to acquire a plastic card. Sometimes the purchase fee is incorrectly referred to as an "activation" fee, since some retailers activate a card at the time of purchase. The important distinction, however, is that the purchase fee is linked to the purchase, and not the activation of the card. The NBPCA believes that disclosure of a purchase fee on the short form disclosure is unnecessary as such fees are currently displayed either elsewhere on the card packaging or by the retailer displaying the prices of goods it sells. In

[31] *See* 79 Fed. Reg. 77147.
[32] *See* 12 USCS § 5531 (2015).

the retail context, the NBPCA points out that the method in which a retailer displays the costs of its goods for sale is often driven by space limitations in the retailer's store. In this instance, the NBPCA believes that whatever methodology a retailer uses to disclose the purchase fee for the card to the consumer will sufficiently alert the consumer to the cost for purchasing the card and additional disclosure of this cost on the short form disclosure is thus unnecessary.

By contrast, an activation fee is generally charged separately from the purchase fee, when the card is activated, and such activation could occur at the point of sale or at a later time. While the NBPCA believes activation fees (separate from purchase fees) are not commonly charged, the NBPCA believes that, to the extent they are charged, such fees would be included in the fee schedule and terms that accompany the card, or if Bureau research indicates such fees are frequently charged, then as a static fee added to the short form disclosure, as discussed above. In light of this, the NBPCA does not believe a special disclosure requirement should apply to such a fee.

The NBPCA asks the Bureau not to require the disclosure of purchase fees on the short form disclosure.

19. The Bureau seeks comment on whether two per purchase fees should be disclosed on the short form disclosure and on whether there are additional per purchase fees beyond using a PIN or a signature that the Bureau should consider including in the short form disclosure. [79 Fed. Reg. 77159]

Response – Unlike the "purchase fee" discussed in our response to Question 18(d) above, this question focuses on "per purchase fees" or "transaction fees" in pay-as-you-go models, which are those fees charged when a cardholder makes a purchase at the point of sale using their card. The NBPCA has no objections to requiring the disclosure of two such per purchase fees and the NBPCA is not aware of any additional purchase fees that require further consideration by the Bureau. The NBPCA would ask, however, that if an issuer only charges only one fee amount per fee category, the issuer have the option of only disclosing that single amount. Further, the NBPCA points out that today, some transactions do not require a cardholder verification method (CVM) and are processed as a PIN less or no signature required transaction. Furthermore, some PIN transactions can be processed on "signature" or dual message networks. Thus, as methods of cardholder authentication further evolve, the distinction between PIN and signature will become increasingly less relevant.

20. The Bureau seeks comment on whether disclosure of additional information regarding ATM withdrawal fees and networks is necessary on the short form, specifically, whether the in- versus out-of-network distinction makes sense for Prepaid Accounts and whether there are additional types of ATM withdrawal fees (other than foreign ATM withdrawal fees) that should be included in the short form. [79 Fed. Reg. 77159]

Response – Consumers have been utilizing ATMs for decades. As such, the NBPCA believes that the concept of in-network and out-of-network ATMs is very common and well understood by consumers and no further explanation is necessary. Further, surcharge-free networks are considered by some as in-network, and others as out-of-network and the Proposed Rule does not clarify how such networks should be treated for purposes of making a disclosure on the short form. To the extent a consumer does not understand the concept of in-network and out-of-network ATMs, the

NBPCA points out that the short form disclosure will have links to both the Bureau and the issuer's customer service number and websites. The NBPCA believes that such websites or customer service numbers provide a better means of explaining the concept of in-network and out-of-network ATMs to the consumer rather than the limited space available on the short form disclosure. The NBPCA requests that the Bureau not require the inclusion of such information on the short form disclosure.

The NBPCA is not aware of any other types of ATM withdrawal fees that should be included in the short form disclosure.

21. The Bureau seeks comment on whether consumers incur ATM balance inquiry fees frequently enough to justify including these fees in the top-line of the short form disclosure. [79 Fed. Reg. 77180]

Response – Obtaining a balance at an ATM is one of the most expensive ways for consumers to determine their account balances. The NBPCA believes it is a best practice to educate customers on how to avoid fees. However, the means of educating and informing consumers of this information should be left to the discretion of issuers.

22. The Bureau seeks comment on whether including the inactivity fee as part of the static portion of the short form disclosure could confuse consumers, and whether it is important to communicate the potential relationship between inactivity fees and monthly periodic fees more clearly on the short form disclosure. [79 Fed. Reg. 77160]

Response - The NBPCA's review of studies conducted on prepaid cards indicates that inactivity fees are not commonly charged.[33] Moreover, the NBPCA's members have similarly indicated that inactivity fees are uncommon in many programs. In fact, rather than charge inactivity fees, several reloadable prepaid card programs charge only a monthly fee. Given that, we do not believe the limited space in the short form disclosure should be used to disclose a fee that is oftentimes not charged. Again, we note that the short form disclosure contains links to the Bureau website (which contains an explanation of inactivity fees), as well as customer service numbers and the issuer's URL. The NBPCA believe these resources are better able to assist a consumer should they have questions rather than a disclosure on the short form.

23. The Bureau seeks comment on the decision to allow financial institutions to continue to use packaging with out-of-date incidence-based fee disclosures in retail stores and as to whether not including a cut-off date would negatively impact consumers in a significant way. [79 Fed. Reg. 77161]

Response – For the reasons described in detail in the NBPCA's response to Question 18(c) above, the NBPCA strongly urges the Bureau to remove the requirement for issuers to update the pre-acquisition short form disclosures of incidence-based fees annually, especially when there has been no change to the underlying fees and terms and conditions of the card. Specifically, the NBPCA again points out that the incidence-based fee disclosures in the Proposed Rule will be complex and

[33] An April 2014 survey noted that only 17% of prepaid cards charge inactivity fees. *See* Bankrate.com, http://investor.bankrate.com/mobile.view?c=61502&v=203&d=1&id=1916181.

difficult to implement, not useful and potentially misleading and confusing to consumers, and impractical to update on an annual basis.

However, should the Bureau decide to retain this requirement, whether in the same or a modified form in its final rule, the NBPCA would then ask the Bureau to retain the ability of financial institutions to continue to use out-of-date incidence-based fee disclosures in stores as currently contemplated by the Proposed Rule. The NBPCA notes that cardholders will have a complete list of all fees in the package to refer to as needed, in addition to the posted terms on the Bureau website, and access to the consumer's own agreement on the issuer's website. The NBPCA believes these resources will ensure that consumers have access to all necessary information and are not harmed by allowing out of date packaging to remain in retail stores for a period-of-time.

24. The Bureau seeks comment on whether it is actually the case that most Prepaid Account products offering multiple service plans only vary based on a couple of fee types. [79 Fed. Reg. 77162]

Response – The NBPCA agrees that most multiple service plans only vary based on a few fee types. Moreover, the NBPCA notes that these fee types are generally already covered in the top-line disclosures required by the Proposed Rule. Again, as set forth in greater detail in the response to Question 18, cardholders will have complete disclosures of all fees and terms when they open the card package or envelope.

In addition, the NBPCA wishes to highlight that while the Bureau's short form disclosure proposal accounts for multiple service plans, it does not contemplate certain fee models that are already available in the prepaid market. Furthermore, the prescriptive nature of the short form disclosure will likely limit future innovation, as described in more detail in our response to Question 18 above. The NBPCA again urges the Bureau to provide more flexibility in its final rule to account for these sorts of innovative and valuable products.

25. The Bureau seeks comment on the overall proposed incidence-based fee disclosure regime, specifically on (a) whether the model forms should more clearly indicate to a consumer the meaning of the incidence-based fees, (b) whether other measures, such as fee revenue, would be better measures of the most important remaining fees to disclose to consumers considering a Prepaid Account, (c) whether there should be a de minimis threshold below which changes to the incidence ranking would not require form revisions, (d) how often financial institutions should be required to update the incidence-based fees disclosures, whether financial institutions should have to all conduct their incidence-based fee assessment at the same time in the 12-month period, and whether the timing requirements for updates to electronic and written disclosures versus those provided on retail packaging should be different, (e) whether the cost to purchase the account should be excluded from the incidence-based fee disclosure or whether it should be mandated as part of the static portion of the short form, and (f) whether there are alternate approaches for disclosing key fees not captured by the standardized portion of the short form that recognize how products may vary and that would prevent evasion of the short form's requirements.

Response –

a. Clear Meaning of Incidence-Based Fees.

The NBPCA believes trying to describe the concept of incidence-based fees in the limited space provided in the short form disclosure would be very difficult and may create even more confusion for consumers. In light of this, and based on the input the Bureau itself has already received from consumers, the NBPCA believes that so long as cardholders will have complete disclosures of all fees and terms when they open the card package or envelope, this should be sufficient. Further explanation of the meaning of incidence-based fees on the short form disclosure is unnecessary.

b. Disclosure of Remaining Fees.

The NBPCA expresses no opinion regarding the method used to determine incidence-based fees. The NBPCA believes this issue is probably best determined through consumer research. The NBPCA asks only that the method chosen be clear, easy to determine, and not be subject to annual updating.

c. De Minimis Threshold for Form Revisions.

As described above and discussed in more detail below, the NBPCA strongly opposes any requirement for issuers of prepaid cards to annually update the incidence-based fees applicable to their programs, unless the issuer has made a change in the fees charged, in which case, the card terms, packaging and disclosures would need to be updated in any event.

d. Disclosure Updates, Assessments, and Timing Requirements.

As discussed in detail in the NBPCA's response to Question 18(c) above, the NBPCA and its members strongly believe that, absent a change in the fees charged by a card issuer, there is no need for annual updating of incidence-based fees.

In reviewing its proposed incidence-based fee requirement, the NBPCA asks the Bureau to consider the larger picture. The NBPCA understands the Bureau's goal in proposing the short form disclosure of finding a way to give consumers a clear, simple, and consumer friendly way to review critical data they need when they are shopping for prepaid cards. The NBPCA believes the Bureau arrived at an elegant and smart solution: a pre-acquisition short form disclosure with the fees most consumers care about displayed in a manner that makes it easy to compare various prepaid card programs with one another.

As the Proposed Rule makes clear, the standardized portion short form disclosure already includes all of the fees consumers typically rely on when deciding which prepaid card to acquire. The Bureau's stated purpose in including incidence-based fees on the short form disclosure is to provide both context and examples of other fees that might be charged. The NBPCA reiterates that it believes this goal would be better served by the Bureau simply selecting, based on its research, the top three fees commonly charged with respect to prepaid card accounts and require that those fees be included as a static disclosure similar to the other fees. It is simple, clear, instructive, and easy to understand for all concerned.

Finally, as noted above, consumers do not base their purchasing decision on incidence-based fees. *The fact that from year to year, one particular incidence-based fee may be more often charged than another is not all that relevant for a pre-acquisition disclosure given that consumers are not basing their purchase decision on these fees.* Rather, the purpose of disclosing the incidence-based fees to let consumers know that there *are* other fees and where to get that data and this purpose is served whether such fees are updated annually or not. Moreover, as noted above, the consumer is always going to have, in the package, and on the Bureau website, and on the card issuer's website a full copy of all the fees, terms and conditions applicable to their prepaid card and there is little benefit to be gained from requiring issuers to update their incidence-based fees on an annual basis. The NBPCA asks the Bureau to revise the Proposed Rule to remove this requirement.

e. Exclusion of Purchase Fee From Incidence-Based Fee Disclosure.

For the reasons discussed in the NBPCA's response to Question 18(d) above, the NBPCA believes consumers have easy access to the purchase fee charged to the consumer to acquire a prepaid card. The NBPCA thus does not believe the fee charged to acquire a prepaid card should be included on the short form disclosure.

f. Disclosure of Fees Not Captured By Standardized Portion of Short Form Disclosure.

The NBPCA is not aware of any other such alternate approaches for disclosure fees that are not captured by the standardized portion of the short form disclosure.

26. The Bureau seeks comment on all aspects of the proposal for overdraft services and other credit features, and, in particular, whether including notice of credit features on the short form disclosure is the proper approach. [79 Fed. Reg. 77164]

Response – The NBPCA's comments on the credit-related issues are discussed in more detail in Section VIII below. However, the NBPCA notes that the proposed disclosure on the short form disclosure can be misleading to consumers and the NBPCA therefore urges a clearer disclosure regarding the availability of overdraft and credit features.

Specifically, the NBPCA is concerned that the proposed disclosure: "No overdraft or credit related fees" might mislead consumers by suggesting that a prepaid card contains credit features but no credit fees. Instead, the NBPCA would suggest a disclosure similar to the following:

> "This card does not offer any credit features."

Alternatively, for Prepaid Accounts where a credit feature is available, the NBPCA would suggest the following:

> "This card offers credit features, but only after 30 days and subject to an approved credit application."

27. The Bureau solicits comment on whether including a statement on the short form regarding other fees would be useful to consumers or if, instead, it might interfere with their ability to make an informed choice among Prepaid Accounts. [79 Fed. Reg. 77164]

Response – The NBPCA agrees that the Bureau's solution for "other fees" in the short form disclosure is a reasonable approach to providing useful data to consumers, without overwhelming them with information and without overcrowding the short form disclosure. Moreover, the NBPCA feels the methodology suggested for establishing the number of "other fees" makes sense. However, the NBPCA is concerned that the proposed language for the disclosure in the model forms may mislead consumers and prevent them from making well informed decisions about the GPR Card best suited to their needs. This is because a consumer reviewing the proposed statement, "[w]e charge 6 other fees not listed here", may believe that such fees are commonly charged, when in fact, any "other fees" not currently required for the short form disclosure are not commonly charged and generally require specific consumer action before being charged. In light of this concern, the NBPCA suggests the following language would be more beneficial for consumers:

"*We charge other fees not listed here. Refer to the cardholder agreement for details.*"

Moreover, the NBPCA cautions that the decision to count each variable fee as a separate fee might unnecessarily increase the number of "other fees" more than is necessary. The NBPCA requests, at a minimum, that the Bureau revise the Proposed Rule to clarify that fees listed on the long form disclosure constitute separate fees, so that a purchase fee is one fee, and not three separate fees, if the same product is distributed at three different retailers that each charge different fees. Finally, the NBPCA is concerned that requiring this type of statement on the short form disclosure could ultimately limit functionality or inhibit innovation over time as issuers would be loath to have to change their packaging if an "other fee" should change or a new feature is added.

28. The Bureau seeks comment on whether the guidance related to the proposed disclosure requirement for other fees is sufficient to enable compliance with § 1005.18(b)(2)(i)(B)(10), as well as on whether its proposed approach to addressing fee amount variations when counting the number of other fees could actually be misleading to the consumer. [79 Fed. Reg. 77165]

Response – As noted our response to Question 27 above, although the NBPCA agrees the Bureau's solution for "other fees" in the short form disclosure is reasonable, we nevertheless have concerns that the proposal on counting each fee variation might make the number of "other fees" look larger than they actually are, that the Bureau needs to clarify that fees listed the long form disclosure constitute separate fees, and that we have concerns the inclusion of an "other fees" statement on the short form disclosure could inhibit innovation over time.

29. The Bureau seeks comment on the requirement that financial institutions provide a "shortened" URL on the short form disclosure, in order to make it easier for consumers to access an electronic copy of the long form disclosure. [79 Fed. Reg. 77165]

Response – The NBPCA believes that the Bureau's proposal to provide a URL on the short form disclosure makes sense. Such a requirement is easy for issuing banks to comply with and will make it easier for consumers to access electronic copies of long form and other applicable disclosures.

However, the NBPCA does have concerns that certain aspects of the URL requirements proposed by the Bureau are impractical. Specifically, in its Commentary, the Bureau provides that the maximum length of the URL would be 22 characters and that the URL must be "meaningfully named" with real words and phrases.[34] The NBPCA is concerned that limiting the required URL to 22 characters while simultaneously requiring that the URL be "meaningfully named" with real words and phrases is inconsistent and will be impractical for issuers to comply with. Further, the NBPCA does not believe that the parameters surrounding the URL proposed by the Bureau are necessary as the limited space provided by the short form disclosure will already require issuers to make the URL as short as possible. Thus, while the NBPCA fully supports the Bureau 's proposal to include a URL on the short form disclosure to make it easier for consumers to access an electronic copy of the long form disclosure, the NBPCA urges the Bureau to revise the Proposed Rule to eliminate the requirement that the URL be limited to a set number of characters and that the URL be "meaningfully named".

30. The Bureau seeks comment on its proposal to disclose a telephone number and the unique URL of a website on the short form disclosure when the long form disclosure is not provided pre-acquisition in retail stores. The Bureau also seeks comment on whether providing a SMS code or QR code on the short form would increase the number of consumers who would be willing or able to access the long form disclosure pre-acquisition in a retail store. [79 Fed. Reg. 77165-66]

Response - The NBPCA endorses including both a telephone number and a URL of the issuer's website on the short form disclosure. In fact, this information is something that the NBPCA's members already routinely provide. The NBPCA believes this is yet another reason why requiring a long form disclosure *pre-acquisition* is really not necessary or beneficial to consumers. A consumer can access all of the information required by the long form disclosure before acquiring a prepaid card account by simply visiting the website listed on the provided disclosure or calling the provided telephone number.

31. The Bureau solicits comment on whether the short form disclosure provided to consumers pre-acquisition should always include a statement regarding registration. [79 Fed. Reg. 77166]

Response – The NBPCA believes the approach suggested under the Proposed Rule for limiting certain protections to those cardholders who have registered their prepaid card account is both a reasonable and appropriate approach to Regulation E error resolution provisions. As such, the NBPCA agrees that informing consumers about this registration requirement is appropriate, and a statement regarding this requirement should be included on all short form disclosures.

The NBPCA is concerned, however, that the language proposed by the Bureau for this disclosure may be misleading to consumers. Specifically, the language in the Proposed Rule is as follows: "Register your card with XYZ Prepaid Company to protect your money". The NBPCA believes that consumers may be confused by the inclusion of a company name in this disclosure as the company performing such registration could be a vendor (such as a program manager) working on behalf of the issuer. For this reason, the NBPCA would suggest revising the disclosure to read as follows: "Register your card to protect your money". As described throughout this letter, the

[34] 79 Fed. Reg. 77172 (December 23, 2014).

NBPCA again urges they Bureau to dispense with the pre-acquisition long form disclosure and instead provide the data needed on the short form disclosure.

32. The Bureau seeks comment on the proposal to include a statement regarding FDIC or NCUSIF insurance on the short form disclosure. Specifically, the Bureau solicits comment on (a) whether the existence – or lack thereof – of pass-through deposit (or share) insurance should be disclosed on retail packaging, online disclosures, or in any other medium, as many consumer advocacy group comments to the ANPR suggested, (b) whether specific language should be used to describe pass-through deposit (or share) insurance, and if so, what that language should be, (c) whether there is a simple way that this, and other conditions on the applicability FDIC pass-through insurance described above, can be disclosed, particularly in retail stores given the limited space available on card packaging material, and (d) non-banks that issue Prepaid Accounts could apply the proposed statement regarding FDIC or NCUSIF insurance to their products, or whether the Bureau should propose an alternative requirement regarding the disclosure of the availability of FDIC or NCUSIF insurance for non-banks that issue Prepaid Accounts. [79 Fed. Reg. 77167]

Response – Assuming the Bureau limits the scope to those reloadable products that consumers use as primary transaction accounts, the NBPCA supports a requirement to disclose to the consumer when a prepaid card account does not carry FDIC (or NCUSIF) insurance. The NBPCA believes, however, that when a prepaid card account carries FDIC (or NCUSIF) insurance, it should be left to the discretion of the issuer whether or not to disclose this fact to the consumer as well as the manner and form of any such disclosure. The NBPCA feels that because issuers have years of experience in making this disclosure, it is not necessary to either mandate the disclosure that the prepaid card has such insurance or to prescribe the specific language and form of that disclosure.

33. The Bureau seeks comment on whether there are other ways that fee variability should be addressed, including whether it should mandate or permit the disclosure of third party fees on the short form, whether financial institutions should be allowed to use more than one type of symbol to explain variability of fees listed in the short form and whether a de minimis exception should be allowed that would permit financial institutions to disclose a different fee if it is close in value to the highest fee. [79 Fed. Reg. 77168]

Response –

a. <u>Disclosure of Third Party Fees</u>.

The NBPCA believes that any disclosure of third party fees as a mandated requirement, on the short form disclosure or otherwise, is impractical. The amount of these fees and the timing and frequency of changes to them is often not in the control of the issuer. Thus, even with a range of fees to account for variability, the issuer would have no way of knowing if the information provided to the consumer was current and accurate. The NBPCA thus urges the Bureau not to include such a requirement in its final rule.

b. Use of Symbols to Explain Variability of Fees Listed on Short Form Disclosure.

As noted above, the NBPCA believes issuers should have the flexibility to disclose the lower end of the variable fee range or provide other clarifying footnotes (including providing clarifying footnotes using different symbols) to explain fee variability or when a fee does not apply.

c. De Minimis Exception.

While the NBPCA would support a de minimis exception allowing for the disclosure of a different fee if it is close in value to the highest fee, as noted in the NBPCA's response to Question 18(b) above, the NBPCA still has concerns that only disclosing the highest fee in a range of variable fees might ultimately be misleading to consumers. Recognizing, however, the limitations on the short form page and the concerns expressed by the Bureau, the NBPCA suggests affording some flexibility to issuers in disclosing variable fees, including conditions for waiver. Specifically, the NBPCA agrees that the highest fee must be displayed. As noted above, however, if the Prepaid Account issuer wishes to disclose the lowest and highest range of fees, and can do so in compliance with the requirements applicable to the short form disclosures, the issuer should have the flexibility to disclose the lower end of the variable fee range or provide other clarifying footnotes (including providing clarifying footnotes using different symbols) to explain fee variability.

34. The Bureau seeks comment on all aspects of the proposed contents of the long form disclosure. In particular, the Bureau seeks comment on whether it should propose more specific content requirements for the long form disclosure, or whether some of the information the Bureau proposes to include on the long form is unnecessary. [79 Fed. Reg. 77169]

Response – As noted above, the NBPCA urges reconsideration of the requirement to provide the long form disclosure pre-acquisition. Based on the feedback the Bureau has received from consumers, the NBPCA believes the long form disclosure adds little benefit and significant cost. Additionally, the NBPCA notes that all prepaid card account disclosures will be provided within the packages or envelopes that the Cards are presented in, thereby providing consumers ample time to review the range of fees and terms that apply. Moreover, the NBPCA notes that, should a consumer determine post-acquisition that a prepaid card does not meet his or her needs, the industry is more than willing to offer a prompt and easy refund.

Our members also have concerns about the commentary and discussion regarding disclosure of third-party fees, and the potential misleading approach that results if only direct fees, and third-party agent fees are reported, but not other third-party fees.

35. The Bureau solicits comment on whether it should provide a model form for the long form disclosure. [79 Fed. Reg. 77171]

Response – As discussed above, the NBPCA believes a long form disclosure is unnecessary and urges the Bureau to do away with it altogether. If the Bureau determines, however, to require a pre-acquisition long form disclosure, the NBPCA believes that the issuer should have flexibility to prepare their own long form disclosure without having to rely on a model form.

36. The Bureau seeks comment on the best way to accommodate Prepaid Account products offering multiple service plans on the short form disclosure while providing accurate and sufficient information to consumers. Specifically, the Bureau seeks comment on whether the disclosure of only the default plan on the short form would be clear or if the Bureau should require that financial institutions always disclose multiple service plans on the short form. [79 Fed. Reg. 77172]

Response – Prepaid card accounts with multiple service plans are not common, but some do exist in the marketplace. The NBPCA agrees that the approach provided by the Bureau works in these instances.

In addition, the NBPCA wishes again to highlight that while the Bureau's short form disclosure proposal accounts for multiple service plans, it does not contemplate certain fee models that are already available in the prepaid market and the prescriptive nature of the short form disclosure will likely limit future innovation, as described in more detail in our response to Question 18 above. The NBPCA again urges the Bureau to provide more flexibility in its final rule to account for these sorts of innovative and valuable products.

37. The Bureau seeks comment on whether there is a better way to group the textual information on the short form disclosure to increase the likelihood that consumers will read it. Specifically, the Bureau solicits comment on whether a requirement that the URL be meaningfully named could make it more challenging for financial institutions to use shortened URLs or other mechanisms on the short form to facilitate accessibility of the long form in retail locations. [79 Fed. Reg. 77172]

Response – As noted in our response to Question 29 above, the NBPCA is concerned that the requirement to provide a shortened URL that is "meaningfully named" as contemplated by the Proposed Rule is impractical. Specifically, the NBPCA is concerned that limiting the required URL to 22 characters while simultaneously requiring that the URL be "meaningfully named" with real words and phrases is inconsistent and will be impractical for issuers to comply with. Further, the NBPCA does not believe that the parameters surrounding the URL proposed by the Bureau are necessary as the limited space provided by the short form disclosure will already require issuers to make the URL as short as possible. Thus, while the NBPCA fully supports the Bureau's proposal to include a URL on the short form disclosure to make it easier for consumers to access an electronic copy of the long form disclosure, the NBPCA urges the Bureau to revise the Proposed Rule to eliminate the requirement that the URL be limited to a set number of characters and be "meaningfully named".

38. The Bureau seeks comment on whether the grouping distinction for short forms that include multiple service plans makes sense. [79 Fed. Reg. 77173]

Response – The NBPCA agrees that the grouping distinction for multiple service plans makes sense and can be implemented relatively easily.

39. The Bureau seeks comment on whether it is feasible for financial institutions in all acquisition scenarios to provide the long form disclosure in English in addition to in the foreign language in which the account is marketed, and whether financial institutions typically already provide disclosures in both languages. The Bureau also solicits comment on whether financial

institutions should also provide the short form disclosure in English in all cases. [79 Fed. Reg. 77175]

Response – While the NBPCA understands the reasoning behind a requirement to provide short form disclosures and other terms to consumers in the language in which the prepaid card account is marketed, the NBPCA is nevertheless concerned that issuers in many instances will be unable to ensure compliance with such a requirement and it is therefore impractical. Specifically, in situations where a prepaid card is distributed not by the issuer itself, but by a third party such as a government agency or employer, while the issuer can train these parties on how they can or cannot communicate with consumers, issuers are nevertheless unable to ensure that the parties actually adhere to these guidelines. Moreover, the NBPCA believes that what is meant by the term "marketing" under the Proposed Rule is unclear. For example, if a consumer were to ask about a prepaid product in a foreign language, it is unclear under the Proposed Rule if the financial institution's response in that situation would constitute "marketing" requiring foreign language disclosures. The NBPCA would thus ask that this requirement be removed from the final rule as it is impractical. If, however, the Bureau retains such a requirement, the NBPCA would ask that the Bureau clarify what is meant by the term "marketing".

40. The Bureau seeks comment on whether a requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c)(1)(i) for Prepaid Accounts generally. The Bureau is also requesting comment on whether, alternatively, the requirement to provide balance information for Government Benefit Card Accounts at a terminal should be eliminated from § 1005.15 given the other enhancements proposed therein and for parity with proposed § 1005.18. [79 Fed. Reg. 77177]

Response – Please refer to our responses to Question 56 in Section V below for our comments on this Question.

41. The Bureau solicits comments on periodic statement alternatives on Prepaid Accounts. [79 Fed. Reg. 77178]

Response – The NBPCA agrees that some of the periodic statement alternatives suggested (e.g., text messages or emails for cardholders who have provided their email addresses and phone numbers and consented to such communications) are best practices that are often used by many of the NBPCA's members and bank issuers currently. However, the NBPCA also agrees that it would not be appropriate to make this a mandatory requirement because of the potential burdens for some issuers to provide this level of service and because of the risk that requiring these alternatives would unduly increase the cost of many such prepaid card accounts.

42. The Bureau requests comment on all aspects of proposed § 1005.18(c)(1) regarding access to Prepaid Account information and commentary related thereto. In particular, the Bureau seeks comment on the methods of access consumers need to their account information, and the time period needed for such access. Additionally, the Bureau requests comment on other alternatives for providing access to account information, as well as potential changes to what is proposed herein. [79 Fed. Reg. 77180]

Response – The NBPCA was surprised to see the significant increase in the requirements for access to prepaid transaction information. In particular, the NBPCA believes the change in time period for providing a transaction history from 60 days to 18 months represents a significant increase in costs and burdens imposed on issuers. For example, issuers and processors will need to implement significant system changes and redesign their platforms in order to maintain and provide such lengthy transaction history reports, and the 9 to 12 month compliance period suggested under the Proposed Rule is an insufficient period. While the NBPCA understands this requirement is intended to accommodate cardholders who need the data for filing taxes, the NBPCA does not believe that use of such data for tax preparation is a common occurrence. The NBPCA suggests, a transaction history period of 12 months is more reasonable as it goes well beyond current rules applicable to debit card accounts and will provide consumers with sufficient information to plan accordingly.

Moreover, the NBPCA notes that under the Proposed Rule, so long as a consumer does not make such a request more than once per month, an issuer must provide a written transaction history at no charge. While the NBPCA recognizes the importance of the providing consumers the ability to access their account histories at any time at no cost, the NBPCA does not believe the proposed requirement is necessary to achieve this result. In particular, the NBPCA points out that, under the proposed requirements, a consumer could request a full written history of their transactions on the first day of every single month. So long as the consumer limited such requests to once per month, the issuer would have to mail a packet to the consumer containing the consumer's full transaction history for a period of 18 months at no charge every month. The costs associated with mailing such transaction histories on a monthly basis could quickly mount up and could result in an issuer determining that offering a particular card program is simply not cost-effective.

The NBPCA also believes that the myriad of ways a consumer can access their transaction history makes the requirement to mail written statements unnecessary. Currently, consumers can obtain free access to their transaction history online, through any computer, smart-phone, or tablet, and can obtain their balance information over the phone at no cost. Moreover, many programs today offer innovative features such as text alerts after every transaction to let consumers know exactly how much money they have left in their accounts. Given the myriad of ways a consumer can access their transaction history at no charge, the NBPCA believes that requiring issuers to mail a written history each month at no cost is not necessary.

As an alternative to providing a free written transaction history each month upon request from a consumer, the NBPCA suggests a requirement entitling consumers to a written copy of their transaction history once every 12 months at no cost to the consumer. Thereafter, the consumer could still obtain a written copy of their full transaction history at any time upon request, but would need to pay a reasonable fee. The NBPCA believes this solution appropriately balances the need to

ensure consumers have ready access to their account histories while not placing any undue burden on issuers to compile and mail months of transaction history information at no cost on a monthly basis.

43. The Bureau solicits comments regarding the proposal to renumber, but otherwise leave unchanged, the section dealing with information included on electronic or written histories. [79 Fed. Reg. 77180]

Response – Despite our concerns regarding the significant increase in transaction data to be provided, the NBPCA agrees that the decision to otherwise leave unchanged the section dealing with information included in the electronic or written history is appropriate.

44. The Bureau solicits comment on the proposal to require disclosure of a summary total of all fees charged to a Prepaid Account. In addition, the Bureau seeks comment on whether any other specific protections of Regulation DD, which may not apply to Prepaid Account provided by financial institutions (as defined in Regulation E) that are not depository institutions (as defined in Regulation DD), could be addressed for all Prepaid Accounts to ensure consistent protections for Prepaid Accounts regardless of who is providing the account. [79 Fed. Reg. 77180]

Response – The NBPCA's members recognize the value that this kind of disclosure – providing aggregated fees paid over time – provides to consumers. The NBPCA therefore supports the overall goal the Bureau is seeking to achieve in including this provision. The NBPCA is concerned, however, that implementing this disclosure will require additional time and systems updates by issuers and processors beyond the 9 to 12 month implementation period suggested in the Proposed Rule. In particular, the NBPCA notes that a disclosure of a fee summary of the type contemplated by the Proposed Rule functions more like a bank account statement than the current rolling transaction history contemplated under Regulation E. Providing this disclosure therefore, will require issuers to implement significant technical changes to their systems and platforms. The NBPCA therefore requests that the Bureau provide issuers with additional time beyond the 9 to 12 month implementation period suggested in the Proposed Rule prior to making such a requirement mandatory. Our members also note that not all providers may have this data already on file, and therefore this requirement should be implemented on a going-forward basis, without requiring the reconstruction of previous records.

Further, our members note that in some cases it is simply not possible for an issuer to know about a charged fee. For example, consider a consumer that withdraws money at an out of network ATM. The consumer withdraws $25 and there is a transaction fee charged by the provider of the out of network ATM of $3. The issuer will see this transaction come through as $28, with no way of knowing that a fee was charged. Therefore, any requirement to provide a summary of all fees charged should exclude those fees in which an issuer cannot determine were even incurred.

45. The Bureau solicits comment on its proposal to require disclosure of all fees, deposits, and debits for the prior calendar month and for the calendar year to date. In particular, the Bureau seeks comment on whether financial institutions are able to discern the amount of third party fees charged to a consumer's Prepaid Account and whether it would be feasible for financial institutions to include such third party fees in this summary total of fees. The Bureau also seeks comment on whether and how credit accessed by a Prepaid Account, and the fees and finance charges related

thereto, should be reflected in these proposed summary totals of fees, deposits and debits for the Prepaid Account. [79 Fed. Reg. 77180-81]

Response – As indicated above, the NBPCA generally supports these measures with the caveat that implementing these additional requirements will take time. With regard to third party fees, the NBPCA again notes that while issuers may know that a dollar amount has been debited, because they do not have access to such information themselves, the issuers will not be able to provide details regarding whether those were fees or other costs. Moreover, if issuers are required to disclose third party fees in their fee schedules, issuers will, by operation of the requirements for providing change in terms notices under Regulation E,[35] also be required to notify consumers of any changes to these third party fees at least 21 days in advance. Because issuers have no ability to control the amount of third party fees or the timing or frequency of changes made to them, such a requirement would be impractical for issuers to comply with. Therefore, any requirement to provide a summary of all fees charged should exclude those fees in which an issuer cannot determine were even incurred. Given these limits, the NBPCA would be happy to work with the Bureau to generate a workable solution for aggregate fee reporting based on existing data collection that will meet consumer needs.

46. The Bureau requests comment on the application of the provisions for initial disclosures regarding access to account information and error resolution, and annual error resolution notices, to all Prepaid Accounts. Specifically, the Bureau seeks comment on whether financial institutions would face particular challenges in providing annual error resolution notices to all consumers using Prepaid Accounts, as well as whether it should require that annual error resolution notices be sent for Prepaid Accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested in written history in an entire calendar year and thus would not have received any error resolution notice during the course of the year. [79 Fed. Reg. 77181]

Response – The NBPCA believes that the existing error resolution procedures as applicable to Payroll Card Accounts should apply generally to all GPR Card accounts that have been registered. The experience of the NBPCA's members indicates that cardholders do not want to be forced to receive transaction history or additional error resolution notices unless they have first made a request for them. In addition, we hope that the Bureau will confirm the ability of any financial institution to provide annual error resolution notices, and other required annual notices (such as the annual privacy notice), via electronic delivery, in accordance with existing federal electronic notice standards. Consumers who request mailed paper notifications can of course receive them in that format, but the NBPCA believes that most consumers prefer electronic delivery of such notices.

[35] *See* 12 CFR § 1005.8.

III. LIMITATION OF LIABILITY AND ERROR RESOLUTION

A. Modified Limitation on Liability Requirements

47. The Bureau seeks comment on the proposal to extend to all Prepaid Accounts the existing limited liability provisions of Regulation E with modifications to the timing requirements for financial institutions following the periodic statement alternative. [79 Fed. Reg. 77182]

Response – The NBPCA supports the extension of existing Payroll Card limited liability provisions "as is" to GPR Cards that are registered, and excluding those Prepaid Account products which we have suggested the Bureau to carve out of the Proposed Rule in our response to Question 1 above, with the one exception (as discussed below) regarding provisional credit requirements.

B. Modified Error Resolution Requirements

48. The Bureau seeks comments on all aspects of its proposal for new § 1005.18(e)(2). In particular, the Bureau requests comment on whether there is an alternative approach to error resolution that the Bureau should adopt for Prepaid Accounts. The Bureau also seeks comment on whether error resolution with provisional credit is appropriate for all, or only certain, Prepaid Accounts, and whether there are any indicators that financial institutions use that might adequately predict the validity of a particular error claim, which might inform the Bureau's application of error resolution requirements to all Prepaid Accounts. The Bureau also seeks comment on whether there might be any other consequences to extending the requirement for error resolution with provisional credit to all Prepaid Accounts. In particular, the Bureau seeks comment on what impact the concern for increased fraud losses (or the potential therefor) might have on financial institutions' eligibility requirements and initial screening processes for new Prepaid Accountholders. The Bureau also seeks comment on whether institutions might become more apt to close accounts that have asserted error claims, and whether and how these factors might result in decreased access to financial products for consumers. [79 Fed. Reg. 77184]

Response – The NBPCA is concerned about the extension of the provisional credit requirements to all Prepaid Accounts. Provisional crediting is an important issue for many NBPCA members due to the significant risks of associated fraud. Specifically, the NBPCA points out that the nature of prepaid cards, and GPR Cards in particular, allows consumers to open and close accounts much more easily than traditional bank accounts with associated debit cards. In addition, GPR Cards can generally be obtained without undertaking credit checks. As such, the provisional credit requirements provide significant risks to GPR Card issuers. Because of the transitory nature of many GPR cardholders and the fact that the negative balances are often too small to justify the collection costs, such negative balances are often written off as fraud losses. The experience of the NBPCA's members indicates that the aggregate amount of such losses increases as the time period shortens within which an issuer must provide provisional credit. In light of these concerns, the NBPCA urges the Bureau to consider limiting the provisional credit provisions to cardholders who have established an ongoing relationship with the card issuer. Such a relationship should be evidenced by the repeated electronic deposit of wages or government benefits to an account, coupled with registration of the account. For example, we believe the receipt of three or more ACH loads from the same remitter over a period of 70 continuous days to a registered account would

constitute an on-going relationship and that such a consumer should be entitled to provisional credits.

Some may suggest extending the period for requiring provisional credit to 30 days. Such an extension should allow financial institutions enough time to research claims and detect potential fraud. This approach, however, should only apply to cardholders who do not have an ongoing relationship with a Prepaid Account issuer. As noted above, it makes sense to provide full provisional credit rights to cardholders with an ongoing customer relationship. Once a consumer has established an ongoing relationship with, the Prepaid Account issuer, then the consumer should receive the same benefits as bank account holders. If they do not have an ongoing relationship then, at a minimum, a 30-day waiting period should apply before provisional credit is provided.

49. The Bureau seeks comment on whether there are any other alternatives to or potential limits on provisional credit that might contain fraud losses for institutions while adequately protecting consumers from harm. [79 Fed. Reg. 77184-85]

Response – In addition to the suggestion noted above, we understand that some have suggested extending the period for requiring provisional credit to 30 days. Such an extension should allow financial institutions enough time to research claims and detect potential fraud. However we believe this approach should only apply to cardholders who do not have an ongoing relationship with a Prepaid Account issuer. As noted in our response to Question 50, we believe it makes sense to provide the full provisional credit rights to cardholders with a customer relationship that mirrors an ongoing bank account relationship. If a consumer has an ongoing relationship with the Prepaid Account issuer, based on direct deposit of wages or other payments, then the consumer should receive the same benefits as a bank account holder. If they do not have an ongoing relationship then, at the minimum, a 30-day wait period should apply.

C. Limitations on Liability and Error Resolution for Unverified Accounts

50. The Bureau solicits comment on the proposal that for Prepaid Accounts that are not Payroll Card Accounts or Government Benefit Card Accounts, if a financial institution discloses to the consumer the risks of not registering a Prepaid Account using a notice that is substantially similar to the proposed notice contained in paragraph (c) of appendix A-7, a financial institution is not required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any Prepaid Account for which it has not completed collection of consumer identifying information and identity verification. Further, the Bureau solicits comment on the proposed exclusion and on what other types of Prepaid Account products might be eligible for it, and whether the exclusion should be applied more broadly or limited only to certain types of Prepaid Account products such as those sold anonymously at retail locations. [79 Fed. Reg. 77185]

Response – The NBPCA generally supports the Bureau's proposed approach. The NBPCA believes that disclosing to consumers the risk of not registering a Prepaid Account adequately protects consumer interests by providing a full disclosure of the limitation on their Regulation E protections. Moreover, as noted in the commentary, cardholders can at any time elect to register their Prepaid Account in order to take advantage of these protections. We also note, however, that the term "registration" is not fully defined in the Proposed Rule. As discussed in the following response to Question 51, we believe that the Bureau should clarify that the FinCEN standards for ID collection

and verification meet, but are not required for, the "registration" requirements set forth in the Proposed Rule.

The NBPCA is concerned, however, with the Proposed Rule's requirement that issuers, upon verification of a consumer's identity, limit that consumer's liability for any errors and unauthorized transactions occurring prior to the consumer's verification and satisfying the timing requirements of Sections 1005.6 and 1005.11.[36] The NBPCA understands that the Bureau's reasoning in proposing this requirement was to protect consumers in the case of an error or unauthorized transaction occurring in the brief period of time between when the Prepaid Account is acquired and when the consumer registers the Prepaid Account. However, the NBPCA's members believe that this interest is outweighed by the substantial fraudulent activity such a requirement is likely to induce. Moreover, the NBPCA believes the Proposed Rule does enough to protect the interests of consumers by requiring clear disclosures instructing the consumer to register the Prepaid Account in order to protect his or her money. For the rare instance where an error or unauthorized transaction occurs in a short timeframe between when the consumer purchases the card and registers it, the NBPCA would be happy to work with the Bureau to develop a solution that adequately protects these consumers' interests without exposing issuers to undue risk of fraud.

51. The Bureau seeks comment on (a) whether FinCEN's regulations are the appropriate standard to use for identification and verification of Prepaid Accountholders, or whether some other standard should be used, (b) whether error resolution should be required even for unidentified or unverified accounts and the proportion of Prepaid Accounts for which customer identification and verification is either never performed or is attempted but cannot be completed, (c) whether such accounts should receive error resolution protections but without requiring financial institutions to grant provisional credit, and (d) whether such evasion is likely to occur and whether the Bureau should impose a time limit for completion of the customer identification and verification process. [79 Fed. Reg. 77185]

Response –

a. FinCEN Standard.

This question raises important issues regarding the intersection between FinCEN regulations and Bureau regulations. The NBPCA believes that, generally, FinCEN's regulations are an appropriate standard to use for identification and verification of prepaid card account holders. Companies that qualify as providers or sellers of prepaid access would already be complying with these requirements, so this aspect of the proposal would not pose an additional burden. These procedures are also similar to what many banks already require for new online account-holders. However, the NBPCA does not believe that the customer identification procedures required by FinCEN should be the set standard for "registration" under the Proposed Rule. The Bureau points out that the goals underlying FinCEN's customer identification requirements – preventing money laundering – differ from those of the Proposed Rule, providing protections to consumers utilizing Prepaid Accounts as banking account substitutes. As such, the NBPCA believes issuers should retain the flexibility to "register" accounts without needing to obtain the full customer identification information required

[36] 79 Fed. Reg. 77303 (December 23, 2014).

by FinCEN. As noted above, we would therefore ask the Bureau to clarify that complying with the FinCEN requirements would meet, but not be required for, the Bureau's registration requirements.

b. Error Resolution Required for Unidentified or Unverified Accounts.

Regarding whether error resolution should be required even for unidentified or unverified accounts, as noted in our response to Question 50 above, the NBPCA supports the Bureau's current approach of not extending Regulation E protections for cardholders who have elected not to register their Prepaid Account. The proposed shift in burden from financial institutions to consumers rather than eliminating error resolution rights altogether is an interesting idea, but the NBPCA believes such burden shifting would be overly complex and difficult to implement and therefore cautions against it.

The NBPCA reiterates its concern, however, with the Proposed Rule's requirement that issuers, upon verification of a consumer's identity, limit that consumer's liability for any errors and unauthorized transactions occurring prior to the consumer's verification and satisfying the timing requirements of Sections 1005.6 and 1005.11. The NBPCA directs the reader to our response to Question 50 above for a more detailed discussion of this issue.

c. Error Resolution without Provisional Credit.

In the case of Prepaid Accounts for which customer identification and verification is attempted but cannot be completed, the NBPCA would support those accounts receiving some error resolution protections pending completion of the process, but without requiring financial institutions to grant provisional credit. The NBPCA feels such a compromise would adequately balance burdens to businesses with the rights of consumers.

d. Customer Identification and Verification Evasion.

Further, the NBPCA also agrees it is unlikely that a financial institution would evade completion of the identification and verification process in order to refuse to address an error asserted by a consumer. As the Bureau itself noted in the Proposed Rule, it is beneficial to the institution to have the consumer complete the identification and verification process and therefore highly unlikely that a financial institution would attempt to evade completion in an attempt to evade resolving a reported consumer error. Additionally, the NBPCA reiterates its support for reasonable consumer protections.

IV. PAYROLL CARDS

In addition to its impact on GPR Cards, the Proposed Rule will significantly affect Payroll Card programs as well. Payroll Cards are a unique prepaid product, offering employees, particularly those in the underserved community, the kinds of flexibility and convenience that traditional payment products, such as paper checks, cannot. Payroll Cards differ from traditional GPR Cards in several ways, including how they are marketed, distributed, acquired, and in how they are treated under federal and state law. In particular, the NBPCA points out that several states have passed substantial wage and hour laws and regulations that directly apply to Payroll Cards. These laws and regulations impose numerous obligations on employers providing Payroll Cards that directly impact

issuers, including restrictions and requirements relating to disclosures, fees, liabilities, and other factors relating to the use of the Payroll Card. Moreover, as the Bureau itself notes in the Proposed Rule, many provisions of Regulation E itself already explicitly apply to Payroll Cards and have done so for a number of years.

52. The Bureau seeks comment on whether it should maintain a separate definition for "Payroll Card Account" as a standalone sub-definition of "Prepaid Account". [79 Fed. Reg. 77132]

Response – Given the unique features and laws applicable to Payroll Cards, the NBPCA supports the maintenance of a separate definition for "Payroll Card Account" as a standalone sub-definition of "Prepaid Account". The NBPCA, however, respectfully urges the Bureau to go further. Specifically, the NBPCA notes that the Bureau included a separate section of the Proposed Rule devoted to Government Benefit Cards for ease of administration and compliance. The NBPCA believes a separate section within the Proposed Rule should be created for Payroll Cards for similar reasons. As noted above, Payroll Cards differ substantially from traditional GPR Cards in many ways. In light of these differences, the NBPCA believes it would significantly ease compliance and administration burdens for issuers if a separate section detailing how certain provisions of the Proposed Rule apply in the Payroll Card context were promulgated. Moreover, the NBPCA points out that, aside from issuers, employers themselves have an interest in knowing the legal requirements of their Payroll Card programs. Creating a separate section of the Proposed Rule to clearly identify what is required of Payroll Card programs serves this interest by providing employers a means to conveniently identify these requirements.

Additionally, the NBPCA wishes to highlight several aspects of the Proposed Rule that are problematic as applied to Payroll Cards. The NBPCA hopes to work with the Bureau to develop workable solutions in order to avoid any negative impact these provisions may have on Payroll Cards and Payroll Card consumers.

a. <u>For purposes of providing the Proposed Rule's required disclosures, the NBPCA urges the Bureau to clarify that "acquisition" occurs when a Prepaid Account is accepted by a consumer and, in the Payroll Card context, such acceptance occurs at the point at which an employee chooses to receive his or her wages on a Payroll Card, consistent with both state law and the Bureau's own guidance</u>.

As discussed above, the Proposed Rule generally requires that consumers receive both short and long form disclosures before they "acquire" a Prepaid Account. The Proposed Rule, however, does not clearly define what constitutes "acquisition", particularly in the context of Payroll Cards. Rather, the Proposed Rule's commentary provides two examples from opposite ends of the spectrum with regard to "acquisition" in the Payroll Card context.

The first example in the commentary deals with situations in which (i) an employee first learns he or she may receive wages through a Payroll Card, and (ii) the employee is then provided with the long and short form disclosures prior to electing this method of payment. According to the commentary, this hypothetical complies with the disclosure requirements contained in the Proposed Rule. By contrast, the second example provided by the commentary describes a situation where an employee receives the Payroll Card at the end of their first pay period along with the long and short form disclosures. According to the commentary, this second example illustrates a situation where

the required disclosures are provided to the employee post-acquisition, and thus were not provided in compliance with the Proposed Rule's disclosure requirements. From these examples, it appears that "acquisition" in the Payroll Card context is ambiguous and may mean either the decision to receive wages on the Payroll Card, the activation of the Payroll Card by the employee, the enrollment of the Payroll Card into the employer's system, or the receipt of the Payroll Card by the employee.

This ambiguity as to when "acquisition" occurs is particularly problematic given the typical manner in which Payroll Cards are distributed and Payroll Card Accounts are opened. To ensure that consumers can obtain their wages as soon and as conveniently as possible, employers offering Payroll Cards typically provide inactive cards to new employees as part of the orientation process along with required disclosures and other information. The disclosures and additional information would also include details regarding alternative means for the employee to receive their wages in compliance with both state and federal requirements already in place.[37]

The NBPCA requests that the Bureau revise the Proposed Rule to define "acquisition" as the point at which a consumer chooses to accept a Prepaid Account. In the Payroll Card context, such acceptance would occur at the point at which an employee chooses to receive his or her wages through a Payroll Card Account. Such a definition of "acquisition" is in keeping with both federal and state law, the methods of distribution of Payroll Cards described above, and the Bureau's own guidance on this issue.[38] Specifically, the Bureau itself has noted that the provisions of Regulation E currently applicable to Payroll Cards do not prohibit handing out inactive Payroll Cards to employees. According to the Bureau, the practice of handing out inactive Payroll Cards to employees is acceptable so long as the Payroll Cards are accompanied by the terms and conditions of the Payroll Card and so long as employees retain the option to receive compensation by other means.[39] With regard to state law, the NBPCA points out that state wage and hour laws generally require providers of Payroll Cards to give required disclosures to employees before the employee agrees to receive their wages through the Payroll Card. The NBPCA thus believes defining acquisition as the point at which a consumer accepts a Prepaid Account, which in the Payroll Card context would be point at which an employee chooses to receive his or her wages onto the Payroll Card, is in keeping with both state law and the Bureau's own guidance. The NBPCA thus respectfully requests that the Bureau make this clarification in its final rule.

Additionally, the NBPCA wishes to note that, under the laws of several states, if an employee is presented with a range of options of how to receive their wages, one of which is a Payroll Card Account, and the employee does not make an election, the employee is deemed to have accepted the Payroll Card and the employer can enroll the employee into receiving their wages through a Payroll Card Account. The NBCPA asks that the Bureau revise the Proposed Rule to clarify that this practice is complies with its requirements.

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[37] 12 CFR § 1005.5(b) (2015).

[38] Such a distribution method is also often in the employee's best interest. For example, consider that some employers distribute an unactivated Payroll Card to an employee for the employee to retain and use in case of an emergency. This practice ensures that an employee will always maintain a safe and convenient way to receive their wages and is further evidence of the benefits to employees from practice of distributing unactivated Payroll Cards.

[39] Letter from Richard Cordray to Senators Blumenthal, Manchin III, and Schumer, dated September 12, 2013, citing 12 CFR 1005.5(b) and 71 Fed. Reg. 51437, 51442 (Aug. 30, 2006).

b. The NBPCA requests that the Bureau clarify that employers will not have to offer options for the method of payment in certain situations, including termination pay.

Under Section 1005.10(e)(2), an employer is prohibited from requiring employees to establish an account at a particular financial institution as a "condition of employment". It is a common practice for employers offer prepaid cards to their employees in several circumstances not involving the regular payment of one's wages. For example, an employer may use a prepaid card to provide termination pay to an employee where provided by state law. Using a prepaid card to make such payments is a convenient method for receiving such funds on the part of the employee. Under the proposed requirements, however, such prepaid cards now constitute Prepaid Accounts subject to Regulation E. In light of these facts, the NBPCA requests that the Bureau revise the Proposed Rule to clarify that prepaid cards used by an employer to provide non-regular wage payments to an employee are not subject to the restrictions of 1005.10(e)(2).

c. The Bureau should revise its final rule to exempt Payroll Cards from the requirement to post and submit Prepaid Account agreements under Section 1005.19.

As discussed in detail above, the Proposed Rule proposes requiring issuers of Prepaid Accounts to post Prepaid Account agreements on the issuers' websites (or make them available upon request in limited circumstances) and to submit those agreements quarterly to the Bureau for additional posting.[40] In the commentary, the Bureau states that it believes this requirement will benefit consumers by facilitating comparison shopping while assisting the consumers' understanding of the terms and conditions of Prepaid Account agreements. While the NBPCA supports a requirement for Payroll Card consumers to have electronic access to their own Payroll Card agreement, the NBPCA does not believe the posting and submission requirements contained in proposed Section 1005.19 makes sense as applied to Payroll Cards. Thus, for the reasons stated below, the NBPCA respectfully requests that the Bureau revise the Proposed Rule to exempt Payroll Cards from the majority of requirements contained in proposed Section 1005.19.

i. The stated goals of the Proposed Rule's section 1005.19 would not be advanced by the public posting of Payroll Card agreements and the posting of such agreements will result in consumer confusion.

The primary benefit cited by the Bureau for requiring the public posting of Prepaid Account agreements and the submission of the agreements to the Bureau for additional public posting, is that it will allow consumers to more easily compare terms of Prepaid Accounts currently in the marketplace. Additionally, the Bureau notes that such posting will facilitate consumers' analysis of Prepaid Accounts and the development of online shopping tools. The NBPCA believes that these justifications do not apply in the Payroll Card context for several reasons.

First, unlike consumers of traditional GPR Cards, consumers of Payroll Cards are not presented with a choice between several card programs. Rather, by definition, consumers of Payroll Cards are employees who are offered the Payroll Card through their employer. The consumer cannot comparison shop for a different Payroll Card so comparing the terms of one Payroll Card program with another will not facilitate comparison-shopping. Given this fact, there is little consumer benefit to be derived from the posting of Payroll Card agreements. By contrast, consider a situation

[40] 79 Fed. Reg. 77304 – 77306 (December 23, 2014).

where a consumer compares the terms of their employer's Payroll Card to those of a traditional GPR Card. In that situation, the consumer can glean some benefit from comparing the terms of the Payroll Card program with those of the GPR Card program because the consumer actually has the ability to choose the GPR Card as an alternative method of wage payment. No such benefit can be gleaned by comparing the terms of two different Payroll Card programs. Requiring issuers to publicly post and submit Payroll Card agreements will not advance the Bureau's goal of facilitating comparison-shopping.

Second, while the NBPCA believes that access to one's own Payroll Card agreement on an issuer's website is essential, the NBPCA fears that access to all Payroll Card agreements available in the marketplace will likely cause consumer confusion and harm. Specifically, there is a danger that publicly posting Payroll Card program agreements will mislead consumers by giving them the impression that they have the ability to comparison shop when they do not. Consumers will be confused as to why they have access to the terms and conditions for Payroll Card programs that the consumer cannot elect to choose, even if they want to. Compounding this confusion is the fact that there are tens of thousands of Payroll Card agreements available in the marketplace and any one issuer may have hundreds if not thousands of its own. Consumers will not only be confused as to why they are being exposed to programs they cannot select, they will also be overwhelmed by the sheer number of agreements in the marketplace.

Exacerbating this confusion is the fact that, as the Bureau itself notes, "the terms of [P]ayroll [C]ard agreements are often individually negotiated with employers."[41] Such negotiation distinguishes Payroll Cards from other prepaid products that are offered to the general public with specific terms and conditions with little variation. In light of this, consumers may not understand why the terms of their employer's Payroll Card program varies from the terms of other Payroll Card programs. Moreover, Payroll Card programs may also differ for a variety of other reasons outside of negotiated terms including differing state law requirements, industry specific needs and requirements, and the specific needs of the employer and its employees. Viewing this disparate information, consumers may not understand why they are being provided information on various Payroll Card programs, all with varying terms and conditions, and none of which are actually available to the employee as a payment choice.

ii. Any benefit of posting Payroll Card agreements on a publicly available website would be outweighed by the administrative burden to issuers (and to the Bureau) and the aforementioned confusion such posting would cause to consumers.

In addition to not advancing the Bureau's stated interests, the NBPCA believes the administrative burdens and consumer confusion created by the requirement to publicly post Payroll Card agreements will clearly outweigh any minimal benefit the posting of such agreements is likely to afford consumers. While the Bureau points to similar requirements applicable to credit card programs under Regulation Z as evidence that the proposed obligations in Section 1005.19 are nothing new for issuers and should therefore not be overly burdensome, the NBPCA respectfully disagrees. Unlike credit card programs, an issuer of Payroll Cards may work with hundreds, if not thousands, of employers, each with a different agreement and fee schedule. Publicly posting each

[41] 79 Fed. Reg. 77276 (December 23, 2014).

one of these agreements, not to mention reviewing them quarterly and submitting them to the Bureau in the manner prescribed by the Proposed Rule, would be a significant administrative burden on Payroll Card issuers.

To illustrate, consider the impact Section 1005.19 will have on one member of the NBPCA. This member is a large national bank and an issuer of several credit card and prepaid card programs, including Payroll Cards. This member currently has only 12 credit card program agreements posted in the public database maintained by the Bureau. By contrast, under the proposed requirements of Section 1005.19, this member would have to post and submit to the Bureau *over 1500 Payroll Card program agreements* in the Bureau's public database. The requirements proposed in Section 1005.19 will result in far greater administrative burdens on issuers than those currently in place under Regulation Z. The Bureau has itself suspended the submission requirement for credit card agreements due to the burden on the Bureau and on issuers. This burden is only magnified for Payroll Card issuers.

Moreover, as discussed above, this burden on issuers would afford little to no benefit to consumers. Consider a consumer who visits the Bureau's website with the intent of reviewing various Payroll Card program agreements to determine how the one offered by her employer stacks up. The employee finds not only the 1,500+ agreements from the member cited above, but also the thousands upon thousands of agreements from other Payroll Card issuers. Some issuers may even have several different cardholder agreements in place with employees of a single employer based on employee residence with varying terms and conditions based on state law, industry, employer negotiation, or any other myriad of factors, and none of which are actually offered to the consumer as an alternative wage payment method. The NBPCA believes that the consumer confusion and frustration created by such a scenario more than outweighs any tangential benefit the posting of these agreements is likely to afford. For all of these reasons, the NBCPA respectfully asks the Bureau to revise its proposed rule to exempt Payroll Card agreements from the majority of requirements of Section 1005.19.

iii. The NBPCA supports a requirement to provide consumers access to their own Payroll Card agreement.

Although the NBPCA believes that the public posting and submission of Payroll Card agreements as outlined in the Proposed Rule does not make sense in the Payroll Card context and the Proposed Rule should thus be revised to exempt Payroll Cards from these requirements, the NBPCA does believe it is of paramount importance for consumers of Payroll Cards to have easy access to their own Payroll Card agreement. To this end, the NBPCA supports the requirements of Section 1005.19(d) of the Proposed Rule. Specifically, the NBPCA believes an issuer should be required to post and maintain the consumer’s Payroll Card agreement on a portion of the issuer's website that is available to consumers once they have logged into their account in accordance with 1005.19(d)(1). Such a requirement ensures a consumer has access to the terms and conditions of their own account, without imposing overly burdensome requirements on Payroll Card issuers that provide little to no benefit to the consumer. Moreover, similar to what is included in the Bureau's website for credit card agreements, the Bureau could provide a statement on its dedicated Prepaid Account website directing consumers of Payroll Cards to visit their issuer's website for a copy of their agreement and to submit a complaint to the Bureau should the consumer have trouble obtaining it.

d. The Bureau should revise the required compulsory use statement to avoid dissuading consumers from choosing a Payroll Card.

Section 1005.15 of the Proposed Rule requires issuers of Payroll Cards to include a statement in the short form disclosure telling the consumer that they do not have to accept the Payroll Card and can ask their employer about other ways to obtain their wages or salary. The Bureau requires this disclosure to be substantially similar to the language contained in its Model Form A-10(b), which reads, "[y]ou do not have to accept this payroll card. Ask your employer about other ways to get your wages".[42]

While the NBPCA strongly supports the right of consumers to elect the wage payment method that best fits their needs, the NBPCA believes the requirement as proposed may actually do more harm than good for consumers. Specifically, the NBPCA is concerned that the particular statement proposed by the Bureau would have a chilling effect on Payroll Card consumers. An employee receiving the short form disclosure with the required statement may be dubious about the reasons for including such a warning and come to the conclusion that a Payroll Card is not a safe payment option, regardless of whether, in reality, the Payroll Card provides the greatest level of benefit to the consumer. Because of its potential to dissuade consumers from electing what may be the most convenient and cost-effective method of wage payment for themselves, the NBPCA urges the Bureau to revise the proposed Model Form A-10(b) to include a statement that is more positive and focuses on consumer choice. Specifically the NBPCA proposes the following statement, which is more positive and alerts the consumer to the fact that they have payment options while mitigating the risk that such a statement could scare them away from choosing a Payroll Card if that option is in their best interest:

> "*Payroll Cards may be a convenient method to receive your wages, but you do have options on how to get paid. Ask your employer about these options*."

e. The Bureau's proposed disclosures fail to provide employees with the information necessary to make an informed decision about how to receive their wages and do not take into consideration state law requirements for disclosing additional information. As such, the NBPCA asks the Bureau to revise its disclosure requirements for Payroll Cards and allow issuers to include required state law information along with the Proposed Rule's required fee disclosures.

As noted previously, the goal of the Bureau's proposed disclosure requirements is to allow consumers to easily compare financial products by ensuring transparent fee disclosures.[43] With regard to Payroll Cards, the Bureau notes "consumers would benefit from receiving the short form and long form disclosures prior to acquiring the [P]ayroll [C]ard account because the disclosures will facilitate the consumer's understanding of the account's terms and may allow for subsequent comparison shopping."[44] The required disclosures, however, fail to account for a fundamental concern in the Payroll Card context – how the employee may access their full net wages each pay period without cost.

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[42] Model Form A-10(b).
[43] 79 Fed. Reg. 77147, 77148 (December 23, 2014).
[44] 79 Fed. Reg. 77150 (December 23, 2014).

Full access to one's wages is a fundamental concern in the context of Payroll Cards. Not only is providing additional information to employees on how to best use a Payroll Card and gain free access to one's wages a recognized best practice in the industry[45], it is also a legal requirement under various state wage and hour laws.[46] Despite this, methods of accessing wages without cost are not depicted, or are hidden, on the proposed long form disclosure and short form disclosure. For example, on the short form disclosure, the only means of cash access shown is ATM withdrawals. Unless a Payroll Card Account provides unlimited in-network or out-of-network ATM withdrawals without cost, the short form disclosure will provide employees with no information regarding how to access their wages for free. Thus, under the Proposed Rule's proposed disclosures, free methods of cash access will not clearly be disclosed and employees will not be provided clear guidance on how to receive their wages without cost.

Compounding the issues created by the Proposed Rule's disclosure requirements for Payroll Cards is the fact that Section 1005.18 of the Proposed Rule would also require the long and short form disclosures to be "segregated" from all other information and to contain only information directly related to the required disclosures. Such a requirement prevents issuers from providing the additional information on wage access required under the various state wage and hour laws referenced above. While the Bureau notes that additional account information may be disclosed on packaging materials or on an issuer's website, much of the additional information required under state law cannot simply be relegated to product packaging or a website. Rather, the requirement will force issuers to provide a fourth disclosure form to Payroll Card consumers (after the short form disclosure, long form disclosure and cardholder agreement), which will increase the risk of consumer confusion at being provided four forms, and increase the risk that one or more of the forms will be lost, or that the consumer will simply not read the additional information.

Given the concerns with the Proposed Rule's disclosure requirements outlined above, the NBPCA requests that the Bureau revise the Proposed Rule's disclosure obligations for Payroll Cards. At a minimum, the NBPCA urges the Bureau to eliminate the segregation requirement in the Payroll Card context where state law and industry best practice require additional information outside of simple fee disclosures.

f. <u>The Bureau should revise the required disclosures to eliminate the requirement to disclose "incidence-based fees" in the Payroll Card context</u>.

The NBPCA reiterates the issues and concerns with the Proposed Rule's requirement to disclose "incidence-based fees" outlined in Question 18 above, and wishes to highlight that such fees make little to no sense as applied to Payroll Cards. First, it should be noted that it is unclear from the Proposed Rule whether the requirement to calculate incidence-based fees in the Payroll Card context applies to an issuer's Payroll Card programs in aggregate, or separately for each employer. If the latter, such a requirement would be overly burdensome for issuers who would need to conduct the required analysis for thousands of employers. If the former, little benefit would be provided to consumers who may receive fee disclosures for charges not applicable to their particular Payroll

[45] NBPCA Payroll Card leading practice; The American Payroll Association and NCLC issued joint payroll card principles in August 2013.
[46] *See, e.g.*, Fla. Stat. § 532.01; Haw. Rev. Stat. § 388-5.7; 820 ILCS § 115/4.5; MCLS § 408.476; Minn. Stat. § 177.255(4, 5); N.H. Rev. Stat. §275:43(I)(d), (II)(a); N.J. Admin. Code 12:55-2.4.

Card program due to state law requirements, industry differences, or their employer's individually negotiated Payroll Card program. In light of this, the requirement to provide incidence-based fees makes little to no sense in the Payroll Card context and the Proposed Rule should be revised to eliminate this disclosure requirement for Payroll Cards.

g. The Bureau should revise the pre-acquisition short form disclosure applicable to Payroll Cards to delete the disclosure regarding "registration".

Section 1005.18(e)(3) of the Proposed Rule provides that issuers are generally not required to comply with the Proposed Rule's error resolution and limitations on liability for unregistered accounts.[47] In light of this, the Bureau rightly requires that issuers include a statement on the pre-acquisition short form disclosure informing the consumer of the risks of not registering their card.[48] The exception provided in Section 1005.18(e)(3), however, does not apply to Payroll Card Accounts.[49] Despite the inapplicability of the exception in Section 1005.18(e)(3), the proposed Payroll Card Account model short form disclosure in Model Form A-10(b) still contains a statement informing the consumer of the risks of not registering their Payroll Card. [50] The NBCPA believes this statement is unnecessary in the Payroll Card context as the consumer's money is protected whether the Payroll Card is registered or not. The NBPCA therefore respectfully requests that the Bureau revise the Payroll Card model short form disclosure to remove this disclosure requirement.

h. The NBPCA believes it is important for consumers to have electronic access to their transaction history, however, the NBPCA asks the Bureau to limit the number of paper statements issuers have to provide to consumers at no cost to one every 12 months.

As noted above, under the Proposed Rule, the Bureau proposes requiring issuers to provide 18 months of transaction history to a consumer upon written or oral request.[51] So long as a consumer does not make such a request more than once per month, the issuer must provide a written transaction history at no charge.[52] First, with regard to the time-period, the NBPCA urges the Bureau to limit the amount of transaction history a Prepaid Account issuer has to keep to 12 months, as opposed to 18. In the experience of the NBPCA's members, consumers have not requested or required 18 months' worth of transaction history for tax-filing purposes. The NBPCA believes extending the period of transaction history provided to a consumer from 60 days to 12 months matches consumer expectations to have access to transaction histories for 12 months without placing any unnecessary burdens on industry participants. With regard to providing a consumer's written transaction history upon request, while the NBPCA recognizes the importance of the providing consumers the ability to access their account histories at any time at no cost, the NBPCA does not believe the proposed requirement is necessary to achieve this result. In particular, the NBPCA points out that, under the proposed requirements, a consumer could request a full written history of their transactions for the previous 18 months on the first day of every single month. So long as the consumer limited such requests to once per month, the issuer would have to

[47] 79 Fed. Reg. 77303 (December 23, 2014).
[48] *Id.*
[49] *Id.*
[50] 79 Fed. Reg. 77308 (December 23, 2014).
[51] 79 Fed. Reg. 77302 (December 23, 2014).
[52] *Id.*

mail a packet to the consumer containing the full 18 months of transaction history at no charge every month. The costs associated with mailing such transaction histories on a monthly basis could quickly mount up and could result in an issuer (i) determining that offering a particular card program is simply not cost-effective and (ii) terminating the applicable cardholder account or the entire Prepaid Account program thus limiting consumer choice.

Moreover, the NBPCA believes that the myriad of ways a consumer can access their transaction history makes the requirement to mail written statements unnecessary. Currently, consumers can obtain free access to their transaction history online, through any computer, smart-phone, or tablet, and can obtain their balance information over the phone at no cost. Moreover, many programs today offer innovative features such as text alerts after every transaction to let consumers know exactly how much money they have left in their accounts. Given the varied ways a consumer has to access their transaction history at no charge, the NBPCA believes that requiring issuers to mail a written history each month at no cost is not necessary.

As an alternative to providing a free written transaction history each month upon request from a consumer, the NBPCA suggests a requirement entitling consumers to a written copy of their transaction history once every 12 months at no cost to the consumer. Thereafter, the consumer could still obtain a written copy of their full transaction history at any time upon request, but would need to pay a reasonable fee. The NBPCA believes this solution appropriately balances the need to ensure consumers have ready access to their account histories while not placing any undue burden on issuers to compile and mail months of transaction history information at no cost on a monthly basis.

V. GOVERNMENT BENEFIT CARDS

Several provisions of the Proposed Rule and comments requested by the Bureau relate to government benefit cards (**"Government Benefit Card(s)"**). Government Benefit Cards have increased in popularity and use over the past several years as state and federal governments move consumers away from paper checks in order to reduce fraud, save money, and improve the overall customer experience of receiving benefits. While the NBPCA supports many of the provisions and commentary in the Proposed Rule relating to this important product category, the NBPCA is concerned that certain provisions of the Proposed Rule may negatively affect Government Benefit Cards and the ability of state and federal governments to effectively utilize them.

53. The Bureau seeks comment as to whether to maintain a separate definition for "Government Benefit Card Account" as a standalone sub-definition of "Prepaid Account." [79 Fed. Reg. 77132]

Response – The NBPCA supports the maintenance of a separate definition of Government Benefit Card Account as a standalone sub-definition of "Prepaid Account". The NBPCA, however, is concerned that several provisions of the Proposed Rule as they apply to Government Benefit Cards do not make sense or will have unintended negative consequences. As such, the NBPCA wishes to highlight several of these sections and work with the Bureau to develop workable solutions in order to avoid any negative impact they may have on Government Benefit Cards or Government Benefit Card consumers.

a. For purposes of providing the Proposed Rule's required disclosures, the NBPCA urges the Bureau to clarify that "acquisition" of a Government Benefit Card occurs at the point at which a consumer chooses to receive his or her benefits on a Government Benefit Card.

Similar to Payroll Cards, the Proposed Rule's requirement to provide short and long form disclosures before a consumer "acquires" a prepaid card is problematic in the context of Government Benefit Cards. Again, it is unclear from the text of the Proposed Rule and the commentary when "acquisition" actually occurs and this ambiguity is particularly problematic in the context of Government Benefit Cards. Like Payroll Cards, and unlike a traditional GPR Card, a consumer may possess a physical Government Benefit Card without making a personal decision to "acquire" a Prepaid Account. For convenience, and to ensure that consumers can obtain their benefits as soon and as conveniently as possible, states and the federal government may send an inactive Government Benefit Card to a consumer. Accompanying the card would be disclosures and other information relevant to opening a Government Benefit Card Account. Also accompanying the card would be instructions for the consumer to provide their bank account information to the government agency if the consumer desires to have their benefits directly deposited therein. The consumer is thus presented with a choice. The consumer can either provide their bank account information to the state or federal government, or elect to receive their payment to the Government Benefit Card if the consumer does not have a bank account or if it is more beneficial to the consumer to do so. If the consumer elects not to use the Government Benefit Card, they are free to dispose of it.

The NBPCA urges the Bureau to revise the provisions of the Proposed Rule applicable to Government Benefit Cards to endorse this model and clarify that "acquisition" of a Government Benefit Card occurs at the point at which a consumer accepts the Government Benefit Card Account. In the context of Government Benefit Cards, such acceptance would generally occur at the point the consumer activates the card they received from the applicable government agency. Such a revision would be beneficial to consumers as they would obtain faster access to their benefit payments and would provide much needed clarity for issuers of Government Benefit Cards to comply with the requirements of the Proposed Rule. Moreover, as noted above, such a revision would be in keeping with methods of card delivery and account opening already approved by the Bureau in the Payroll Card context.

Additionally, the NBPCA asks the Bureau to clarify that, if a consumer is presented with a range of options in how to receive their benefits, one of which is a Government Benefit Card, and the consumer fails to make an election, the government agency can automatically enroll the consumer into receiving their benefits through the Government Benefit Card Account, which is standard practice for many Government Benefit Card programs today.

The NBPCA respectfully requests that the Bureau make these clarifications in its final rule or in related Official Interpretations.

b. The Bureau should revise the Proposed Rule to exempt Government Benefit Cards from the requirements to post and submit account agreements.

Much like Payroll Cards, users of Government Benefit Cards do not have the ability to comparison shop between Government Benefit Card programs. Rather, consumers are limited to the Government Benefit Card program offered by the particular government agency administering the consumer's program or choosing an alternative method for receiving the benefit payments, such as electronic deposit to a bank account or GPR Card. Further, unlike credit cards for which the Bureau currently requires posting, Government Benefit Card programs are not widely available to the public. For these reasons, the posting of Government Benefit Card Account agreements on an issuer's website, and the submission of such agreements to the Bureau for posting, will not advance the Bureau's stated goals of promoting consumer comparison shopping and assisting in the understanding of account terms. Moreover, such posting is likely to create confusion among consumers who may be misled into believing that they do have an ability to comparison shop between various government agency programs, and not understand why, for example, they cannot take advantage of a program offered in Utah, in their home state of Massachusetts. Moreover, consumers may face confusion from the different features and fee structures between various Government Benefit Card programs. The NBPCA believes that whatever little benefit is derived from posting and submitting Government Benefit Card agreements is substantially outweighed by the risk of creating consumer confusion and misleading consumers into believe they have choices for their benefit payments that they do not in fact possess. In light of these facts, the NBPCA asks the Bureau to revise the Proposed Rule to exempt Government Benefit Cards from the majority of requirements of § 1005.19.

The NBPCA supports the requirement that all Government Benefit Card Accountholders have access to their own account agreement on a dedicated portion of the issuer's website. The NBPCA refers the reader to Section IV herein for a more detailed discussion on this issue.

c. The Bureau should revise the pre-acquisition short form disclosure form applicable to Government Benefit Cards to delete the disclosure regarding "registration".

Section 1005.18(e)(3) of the Proposed Rule provides that issuers are generally not required to comply with the Proposed Rule's error resolution and limitations on liability for unregistered accounts.[53] In light of this, the Bureau rightly requires that issuers include a statement on the pre-acquisition short form disclosure informing the consumer of the risks of not registering their card.[54] The exception provided in Section 1005.18(e)(3), however, does not apply to Government Benefit Card Accounts.[55] Despite the inapplicability of the exception in Section 1005.18(e)(3), the proposed Government Benefit Card Account model short form disclosure in Model Form A-10(a) still contains a statement informing the consumer of the risks of not registering their Government Benefit Card.[56] The NBCPA believes this statement is unnecessary in the Government Benefit Card context as the consumer's money is protected whether the Government Benefit Card is registered or not. The NBPCA therefore respectfully requests that the Bureau revise the Government Benefit Card model short form disclosure to remove this disclosure requirement.

[53] 79 Fed. Reg. 77303 (December 23, 2014).
[54] *Id.*
[55] *Id.*
[56] 79 Fed. Reg. 77307 (December 23, 2014).

d. The NBPCA requests that the Bureau revise its transaction history requirements as applied to Government Benefit Cards.

The NBPCA asks the Bureau to extend the time-period of transaction history available to a consumer from 60 days to 12 months, as opposed to the 18 month period which appears in the Proposed Rule. The NBPCA further asks the Bureau to eliminate the requirement to provide consumers one free written transaction history upon request each month for the same reasons discussed in our response to Question 42 above. Additionally, the NBPCA renews its suggestion that, as an alternative, the Bureau could require issuers to provide consumers with a free copy of the consumer's written transaction history upon the consumer's request once every 12 months, and provide additional copies as requested by the consumer at a reasonable cost.

54. The Bureau seeks comment regarding Regulation E's compulsory use provision for an account established to receive government benefits. [79 Fed. Reg. 77136]

Response – Proposed Section 1005.15(c)(2) of the Proposed Rule will require government agencies providing Government Benefit Cards to disclose to consumers as part of the pre-acquisition short form disclosures, that the consumer does not have to accept the Government Benefit Card and can ask the agency about other ways in which the consumer may receive their benefit payments. The NBPCA believes consumer choice in how they receive benefit payments is of paramount importance. With this in mind, the NBPCA fully supports a requirement that government agencies only be allowed to require direct deposit of benefits by electronic means so long as consumers are allowed to choose the institution that will receive the electronic payment. Such a requirement is in keeping with both current industry practices and the Department of the Treasury's mandate that all federal benefit and non-tax payments, such as Social Security Income and Supplemental Security Income, be provided to consumers electronically as of 2013.[57]

The NBPCA, however, does not believe that the short form warning statement proposed in Section 1005.15(c)(2) of the Proposed Rule is necessary to ensure consumer choice. In particular, the NBPCA is concerned that the statement, as written, may have a chilling effect on recipients of Government Benefit Cards, driving them away from this payment option, regardless of whether it provides the greatest level of benefit to the consumer. The proposed required statement reads as follows, "You do not have to get your payments on this prepaid card. Ask about other ways to get your payments". The NBPCA believes this statement is overly negative and a consumer reading it may conclude that receiving their government benefit on a Government Benefit Card is not in the consumer's best interest, regardless of whether this method of payment is more convenient or beneficial to the consumer than the alternatives. The statement as written will have a chilling effect on consumers, causing them to make potentially negative financial decisions. For these reasons, the NBPCA urges the Bureau to consider alternative, less negative language that is more focused on consumer choice. The NBPCA suggests the following:

[57] *See Department of Treasury, Management of Federal Agency Disbursements*, available at http://www.fms.treas.gov/eft/regulations/31cfr208final.pdf (last visited, February 15, 2015).

> "*Prepaid Cards may be a convenient method to receive your benefit payments, but you do have options on how to get paid. Ask your benefit provider about other ways to get your payments.*"

It should be noted, however, that laws in some states with regard to government benefits mandate that a consumer receive funds electronically and do not permit other options. We believe the disclosure needs to be modified to take these state laws into account as these states may not have systems in place to provide alternative means of payment, especially paper checks. The Bureau should thus provide flexibility in recognition of this problem and can do so by including additional language in the disclosure, such as "State law may require you to receive your payments electronically, which may limit your options."

55. The Bureau seeks comment regarding the Bureau's decision to add a definition for " Government Benefit Card Account" and maintain current Section 1005.15 in effect for such accounts, or whether, in light of the proposal to address all other types of covered Prepaid Accounts in Section 1005.18, the Bureau should subsume all requirements for Government Benefit Card Accounts into Section 1005.18 as well. [79 Fed. Reg. 77141]

Response – Like Payroll Cards, the NBPCA believes Government Benefit Cards are unique from traditional GPR Cards in several important respects including how such Government Benefit Cards are marketed and acquired. Given the unique nature of Government Benefit Cards, the NBPCA believes it is appropriate and desirable to maintain a separate section of the Proposed Rule applicable specifically to this product type.

56. The Bureau requests comment on whether the requirement to provide balance information for Government Benefit Card Accounts at a terminal should be eliminated from Section 1005.15 given the other enhancements proposed herein and for parity with proposed Section 1005.18. [79 Fed. Reg. 77142]

Response – Given the other enhancements proposed by the Bureau, and the myriad of ways a consumer may check their account balance, the NBPCA does not believe it is necessary to provide balance information for Government Benefit Card Accounts at terminals, and thus requests the Bureau revise the Proposed Rule to eliminate this requirement from Section 1005.15. Specifically, the NBPCA points out that the requirement to provide consumers receiving government benefits account balance information at a terminal has existed since at least 1994.[58] At that time, the requirement to provide a consumer with their account balance at a terminal was necessary, as there were relatively limited ways in which a consumer could receive their account balance.

Since the inception of this requirement, however, advances in technology have created a myriad of ways for a consumer to access their accounts and obtain their current balances. For example, in addition to receiving their account balance information over the phone and at terminals, consumers can now obtain their account balance online, through any computer, smart-phone, or tablet. Moreover, many programs today offer innovative features such as text message alerts after each transaction that tell consumers how much money they have left in their accounts in real time. These resources were simply not available to consumers at the time the requirement to provide account

[58] 59 Fed. Reg. 10678, *10683 (1994).

balance information at a terminal was first implemented. Given the technological advances that have created varied ways for a consumer has to access their balance information, the NBPCA believes that maintaining a requirement for issuers to provide account balance information at a terminal is unnecessary. The NBPCA thus urges the Bureau to eliminate this requirement.

57. The Bureau seeks comment on whether it should continue to require annual error resolution notices for Government Benefit Card Accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested a written history in an entire calendar year. [79 Fed. Reg. 77143]

Response – The NBPCA strongly urges the Bureau to revise the Proposed Rule to eliminate the requirement to provide annual error resolution notices for Government Benefit Card Accounts when an account is dormant or when a consumer has not accessed an electronic history or requested a written history in an entire calendar year. In the Government Benefit Card context, it is common to have dormant accounts because maintaining such accounts – even though they are inactive – is a requirement imposed on an issuer by the government agency itself. In the experience of the NBPCA's members, however, a troubling phenomenon occurs when annual error resolution notices for dormant Government Benefit Card Accounts are sent to consumers. Specifically, NBPCA member companies, as well as government agencies, have found that the practice of sending such notices actually frightens consumers. Consumers receiving these notices, particularly those unfamiliar with bank accounts, often do not understand what the notices mean and why the consumer is receiving them. It is not uncommon for government agencies and issuers to receive calls from concerned consumers who receive the notices and believe that their benefits are being taken away from them for some reason. Given this phenomenon, the NBPCA believes that the practice of sending error resolution notices on dormant Government Benefit Card Accounts results in far more harm than good, and urges the Bureau to eliminate this requirement.

The NBPCA's members have noted that, should the Bureau wish, they would be happy to put the Bureau in touch with appropriate state regulators to explain this troubling phenomenon in more detail.

58. The Bureau seeks comment on proposed § 1005.18(g), which would require that for credit plans linked to Government Benefit Card Accounts, a government agency must comply with prohibitions and requirements applicable to financial institutions offering Prepaid Accounts as set forth in proposed § 1005.18(g). [79 Fed. Reg. 77145]

Response – The NBPCA believes the provisions in the Proposed Rule relating to the provision of credit features with a Prepaid Account will have serious, negative consequences across all Prepaid Account product types. As such, the NBPCA is suggesting substantial revision to these provisions of the proposed rule. The NBPCA refers the reader to Section VIII, herein for a discussion of these requested changes.

59. The Bureau seeks comment on the proposed modifications to appendix A-5 and whether any additional modifications should be made. The Bureau is particularly interested in whether any Government Benefit Card Account programs use this optional language in their disclosures and whether inclusion of such language reduces consumer confidence in Government Benefit Card Accounts or the privacy of consumers' account histories. [79 Fed. Reg. 77203]

Response – The NBPCA has no comment regarding the proposed modifications to appendix A-5.

VI. STUDENT CARDS

Certain provisions of the Proposed Rule also touch upon cards offered to students in connection with the students' tenure at a college or university (**"Student Card(s)"**). Student Cards are a unique prepaid product. Like Payroll and Government Benefit Cards, Student Cards differ from traditional GPR Cards in several ways, including how they are marketed, distributed, acquired, and in how they are treated under federal law, particularly under regulations promulgated by the Department of Education (**"DOE"**). Student Cards generally serve as a means for students to receive their Title IV funds electronically, but also provide many additional features and benefits for students. Specifically, Student Cards provide students with a turnkey payment solution to nearly all aspects of student life on campus. Students can generally use their Student Card not only as a means of receiving Title IV benefit payments, but also as a way to deposit their own funds including payroll wages and other funds. Moreover, in several programs, Student Cards also serve as an identity card the student can use to access dorm rooms or other campus buildings, utilize campus transportation, buy books and other school supplies, and eat in campus cafeterias.

In addition, the NBPCA would like to specifically highlight the fact that Student Cards used to disburse Title IV funds are also already subject to substantial regulation from the DOE. Specifically, under DOE regulations already in place, colleges and universities offering Student Cards to students as a means of receiving Title IV funds must comply with various obligations and requirements relating to the opening and maintenance of the Student Card account. These obligations and requirements include, but are not limited to, the following: (i) obtaining the written consent of the student or their parent prior to opening a Student Card account, (ii) providing the student or their parent all of the terms and conditions of the Student Card account, including all fees, prior to account opening, (iii) ensuring convenient ATM access for the Student Card on or around campus, and (iv) not marketing the Student Card as a credit card or credit instrument, or subsequently converting the account, card, or device to a credit card or credit instrument.[59]

The NBPCA believes that, in light of the unique features of Student Cards described above, Student Cards deserve individual treatment under the Proposed Rule similar to that provided to Government Benefit Cards. In particular, the NBPCA requests that the Bureau revise the Proposed Rule to include a separate definition for "Student Card Account" as a standalone sub-definition of a "Prepaid Account". The NBPCA suggests the following definition for Student Card Account:

> "An account directly or indirectly established through an institution of higher education and to which electronic fund transfers of funds are made, whether the account is operated or managed by the institution of higher education, a third-party processor, a depository institution, or any other person."

Moreover, the NBPCA believes certain provisions of the Proposed Rule should be revised to apply differently in the Student Card context and requests that the Bureau revise the Proposed Rule to create a new section particularly applicable to Student Cards, similar to that provided for

[59] 34 C.F.R. § 668.164 (2015).

Government Benefit Cards. The NBPCA is concerned that several provisions of the Proposed Rule, as they apply to Student Cards, do not make sense or will have unintended negative consequences. As such, the NBPCA wishes to highlight several of these sections and work with the Bureau to develop workable solutions to be included in a new section of the Proposed Rule dealing with Student Cards, in order to avoid any negative impact they may have on Student Cards or students.

a. For purposes of providing the Proposed Rule's required disclosures, the NBPCA urges the Bureau to clarify that "acquisition" of a Student Card occurs at the point at which a student chooses to receive payments on a Student Card.

For reasons similar to those outlined in Sections IV and V above for Payroll Cards and Government Benefit Cards, the Proposed Rule's requirement to provide short and long form disclosures before a consumer "acquires" a prepaid card is problematic in the context of Student Cards. Again, it is unclear from the text of the Proposed Rule and the commentary when "acquisition" actually occurs and this ambiguity is particularly problematic in the context of Student Cards. Unlike a traditional GPR Card, a student may possess a physical Student Card without making a personal decision to "acquire" a Prepaid Account. For example, as part of a student's enrollment process, they may be presented with an inactive Student Card along with all required disclosures and necessary information and presented with the option of choosing the Student Card as a method of receiving Title IV funds or electing an alternative method such as electronic deposit to an existing bank account. Such a practice is in compliance with current DOE regulations because the student or parent, prior to opening a Student Card account, is presented with all of the terms and conditions of the account, including all fee information.

The NBPCA urges the Bureau to revise the provisions of the Proposed Rule applicable to Student Cards to clarify that "acquisition" under the Proposed Rule occurs at the point at which a consumer accepts the Student Card account. In the context of Student Cards, such acceptance would occur at the point the student chooses to accept payments through the Student Card. This revision would be beneficial to students as they would obtain faster access to financial services and their benefit payments and would provide much needed clarity for issuers of Student Cards. Such a clarification would also be in keeping with the regulatory requirements issued by the DOE that students receive all terms and conditions of an account. Moreover, as noted above, such a revision would be in keeping with methods of card delivery and account opening already approved of by the Bureau in the Payroll Card context. Such a revision would additionally comply with current DOE regulations governing student aid disbursement.

Finally, the NBPCA requests that the Bureau clarify that if a student fails to elect a particular method for receiving their Title IV funds, the student's college or university can automatically enroll the student into receiving such funds through a Student Card.

The NBPCA respectfully requests that the Bureau make these clarifications in its final rule or in related Official Interpretations.

b. The Bureau should revise the Proposed Rule to exempt Student Cards from the requirements to post and submit account agreements.

Much like Payroll Cards, users of student Cards do not have the ability to comparison shop between Student Card programs. For this reason, as with Payroll Cards, the posting of Student Card account agreements on an issuer's website, and the submission of such agreements to the Bureau for same, will not advance the Bureau's stated goals of promoting consumer comparison-shopping and assisting in the understanding of account terms. Moreover, such posting may result in misleading students into believing they have the ability to comparison shop when they do not. Further, in addition to potentially misleading students, such posting is likely to create confusion among students who may not understand why differing student Card programs contain different features and fee structures. Finally, what little benefit is derived from posting and submitting Student Card agreements is substantially outweighed by the administrative burdens imposed on issuers in submitting such agreements quarterly in the form prescribed by the Proposed Rule. In light of these facts, the NBPCA asks the Bureau to revise the Proposed Rule to exempt Student Cards from the majority of requirements of Section 1005.19.

The NBPCA does renew its support for the requirement that all Student Card accountholders have access to their own account agreement on a dedicated portion of the issuer's website. The NBPCA refers the reader to Section IV herein for a more detailed discussion on this issue.

c. The NBPCA requests that the Bureau revise its transaction history requirements as applied to Student Cards.

The NBPCA asks the Bureau to extend the time-period of transaction history available to a consumer from 60 days to 12 months, as opposed to 18 months as proposed in the Proposed Rule. The NBPCA further asks the Bureau to eliminate the requirement to provide consumers one free written transaction history upon request each month for the same reasons discussed in our response to Question 42 above. Additionally, the NBPCA renews its suggestion that, as an alternative, the Bureau could require issuers to provide students with a free copy of the student's written transaction history upon the student's request once every 12 months, and provide additional copies as requested by the student at a reasonable cost.

60. The Bureau seeks comment on whether it should impose "compulsory use" language similar to that required for Payroll and Government Benefit Cards under the Proposed Rule for cards issued by post-secondary educational institutions for financial aid disbursement. [79 Fed. Reg. 77136]

Response – As discussed above, the Proposed Rule requires issuers of Payroll and Government Benefit Cards to include language on their short form disclosures to consumers telling the consumers that they do not have to accept the cards as a method of payment and to ask about alternative means of receiving payment. The NBPCA believes such a requirement should not be extended to Student Cards for the following reasons.

First, similar to Payroll and Government Benefit Cards, the NBPCA believes the required disclosure contemplated by the Bureau would harm students by placing the choice of a Student Card in an unnecessarily negative light. Students and parents viewing the short form disclosure may conclude that its wording and prominent placement on the form is intended to warn the student from electing

to obtain the Student Card account, regardless of whether the Student Card account affords the most convenience and benefit to the student.

Second, the NBPCA believes that a compulsory use requirement similar to that proposed for Payroll and Government Benefit Cards in the Student Card context is not necessary given the already substantial existing protections afforded under the DOE's regulations. Specifically, as noted above, DOE regulations require affirmative written consent from a student or their parent in order to open a Student Card account. Moreover, this consent can only be obtained after disclosure of all of the terms and conditions applicable to the Student Card, including all fee information. The NBPCA feels these obligations already ensure that students are presented with all necessary information in order to make an informed decision to obtain a Student Card or choose an alternative payment method, and that further requirements are therefore unnecessary.

In light of these issues, the NBPCA strongly believes that the "compulsory use" language requirements contained in the Proposed Rule for Payroll and Government Benefit Cards should not be extended to Student Cards. The NBPCA would ask, however, that if the Bureau disagrees and extends this requirement to Student Cards, that the Bureau modify the language in the required disclosure so that it is more positive and less likely to dissuade students from choosing a Student Card if it is in their best interests to do so. The NBPCA suggests the following:

> "*Prepaid Cards may be a convenient method to receive your student aid, but you do have options on how to receive disbursements. Ask about other ways to receive disbursements.*"

61. With regard to reporting and marketing rules for college student open-end credit, the Bureau seeks comment regarding whether it should provide that these provisions apply to the issuance of Prepaid Accounts that do not have credit card accounts linked to them at the time the Prepaid Accounts are opened, if credit card accounts may be linked to the Prepaid Accounts in the future. [79 Fed. Reg. 77251]

Response – The NBPCA believes the provisions in the Proposed Rule relating to the provision of credit features with a Prepaid Account will have serious, negative consequences across all Prepaid Account product types. As such, the NBPCA is suggesting substantial revision to these provisions of the proposed rule. The NBPCA refers the reader to Section VIII, herein for a discussion of these requested changes.

With particular regard for Student Cards, however, the NBPCA wishes to point out that the credit obligations proposed under the Proposed Rule could cause Student Card issuers to unwittingly violate certain provisions of federal law. As noted below, the Proposed Rule defines credit for purposes of prepaid card accounts, to include transactions where a consumer has insufficient or unavailable funds, whether at the time of the transaction or when the transaction is paid. According to the Bureau, when such a transaction is accompanied by a fee, such a fee could constitute a "finance charge" and the transaction would result in an extension of credit subject to the credit obligations under the Proposed Rule. The problem, however, is that in many cases an issuer cannot control or stop a transaction where a consumer has insufficient or unavailable funds. These so-called "force-pay" transactions are a result of network rules that require an issuer to pay all transactions that clear through the network and are presented to the issuer, absent merchant fraud or other narrow circumstances. The purpose of these rules is to provide confidence to merchants that

debit and open-loop prepaid card transactions will be paid and the rules are thus necessary to the functioning of the network payment system.

As an example of a "force-pay" transaction, consider a student using a Student Card to purchase gas at a gas station. The Student Card has a current balance of $60. The merchant submits a $1 pre authorization to validate the card. The transaction is authorized because the funds on the Student Card are sufficient to cover the charge and any additional amount the issuer may add to the authorization hold. The student subsequently purchases $70 worth of gas resulting in an overdraft of the Student Card account once the transaction is posted. If the issuer charges a fee in relation to the transaction itself, then under the Proposed Rule, the transaction could result in an extension of credit. Further, the extension of credit would occur despite the fact that the issuer never intended to allow the student to overdraw the account and that whatever fee was charged was therefore not directly associated with an extension of credit.

The result of the above scenario is that, because an issuer cannot stop a "force-pay" transaction, depending on the fee structure for a given program, any Student Card has the potential to be converted into a credit card. This result is particularly problematic for Student Card issuers. As noted above, current DOE regulations applicable to Student Cards prohibit disbursing Title IV funds to an account that can be converted into a credit instrument.[60] Because Student Cards under the Proposed Rule could be converted into a credit instrument through a "force-pay" transaction outside the control of the issuer, an issuer could violate this provision of the DOE regulations simply by issuing a Student Card. The NBPCA does not believe that the Bureau intended for such a result and therefore asks the Bureau to revise the Proposed Rule to clarify that "force-pay" transactions similar to the one described above, will not result in the conversion of a Student Card into a credit instrument.

Moreover, the NBPCA is concerned that the Proposed Rule creates ambiguity regarding the Regulation Z treatment of prepaid cards and associated account numbers where a consumer arranges with a creditor to have funds from a loan or line of credit loaded to a Prepaid Account. This is a concern in the context of Student Cards. The NBPCA understands that it is common for colleges and universities to deposit student loan funds as well as funds from tuition-assistance and grant programs into accounts specified by the student. The fact that the student arranges for loan funds to be deposited into a Prepaid Account should not cause that account (or associated number or prepaid card) to be a credit card or a credit card account under an open-end (not home secured) consumer credit plan, Moreover, we believe that the prepaid card issuer generally would have no ability to tell whether funds deposited by a college or university are credit funds or funds from tuition-assistance or grant programs. The NBPCA directs the reader to Question 65 for more detailed commentary on this issue.

VII. HEALTHCARE CARDS

The NBPCA supports the Bureau's decision to exclude health savings accounts, health flexible spending arrangements and health reimbursement arrangements from the coverage of the Proposed Rule. The NBPCA does not believe that these products warrant protections under Regulation E because they are not viewed as primary transaction accounts by consumers and their use is

[60] 34 C.F.R. § 668.164.

extremely limited to qualified healthcare expenses as set forth in Section 213(d) of the Internal Revenue Code. These products are viewed by their users as access to employee benefits for healthcare or as a mechanism to pay for healthcare rather than as a general purpose payment device.

With respect to both FSAs and HRAs, it is important to point out that the payment cards are never "loaded" with consumer funds at all. Both FSAs and HRAs are healthcare benefit plans (each, a **"Plan"**) under the Internal Revenue Code and are simply not "accounts" at all. The funds available to an employee through these products do not belong to the employee—they are employer funds. There is never a consumer asset account accessed through the cards and generally there is not even a funded account at the issuing bank accessed by the cards. An employee participating in an FSA or HRA is participating in a benefit Plan offered by his or her employer. We would also point out that under the Internal Revenue Code, an FSA is properly defined as a "flexible spending arrangement"[61] and we urge the Bureau to change the existing reference to "flexible spending account" in proposed Section 1105.2(4) (iv) to instead read "flexible spending arrangement".

With respect to FSAs, for example, an employee participating in the employer's Plan requests the employer to withhold certain amounts from the employee's salary and make those amounts available to reimburse the employee for qualified expenses under the Plan. For purposes of illustration, an employee could request his or her employer to withhold $100 per month from salary, and make that amount available to reimburse the employee for qualified health care expenses. The employee is entitled to reimbursement up to the full amount of the employee's annual election as of the first day of the Plan year (in the example, a total of $1,200), but the employer has no obligation under the Internal Revenue Code to set aside the $1,200 in any manner, and no obligation to fund any kind of asset account each month as the $100 is withheld from the employee's earnings. The amount is notional, not an actual account, and constitutes a general obligation of the employer, as Plan sponsor, to reimburse the employee. When the payment card is used by the employee, the payment transaction is considered a health benefit under the Plan. The payment is made via the card, from the Plan, rather than by the employee with the employee's own funds.

In fact, there is no asset account in which the funds eligible to be used for employee healthcare expenses under a Plan are held—whether on an individual or omnibus basis. Card transaction settlements generally flow through a settlement account which operates as a clearance or zero balance account. The card transactions are authorized at the point of sale, and the employer is required to fund the account by wire or ACH each business day in an amount that reflect the card swipes for that business day (or preceding weekend or holiday). Thus, while an employer, as Plan sponsor, may be required to maintain an account at the issuing bank for security purposes, the card transactions are generally effected against a zero balance account.

While the NBPCA supports the Bureau's decision to exclude certain healthcare accounts from the Proposed Rule, the NBPCA has serious concerns that the exceptions in the Proposed Rule do not go far enough as they do not exclude other types of employee benefit accounts such as transit and parking reimbursement and dependent care FSAs, which operate similarly and should logically be excluded as well. In addition, the exceptions do not include employee wellness cards, which are given to incent items such as gym visits and preventative care doctor appointments. These wellness cards are functionally similar to loyalty, award and promotional (LAP) cards, which are excluded from the coverage of the Proposed Rule.

[61] See Internal Revenue Code § 106(c) (2) and Prop. Treas. Reg. § 1.125-5(a).

The NBPCA also has concerns that the references to specific Internal Revenue Code sections for the healthcare cards excluded from the Proposed Rule, while helpful, could be detrimental whenever those Internal Revenue Code section references are updated or when new employee benefit products are created under new subsections of those Internal Revenue Code sections. The NBPCA would encourage the Bureau to broaden the exception to include any existing or newly created employee benefit accounts and other similar benefit programs which restrict access to funds to only qualifying merchants or merchant types (even if such merchants are unaffiliated) with no cash access, which would otherwise fall under the new definition of Prepaid Accounts in the Proposed Rule, but which are not treated by consumers as functionally similar to primary transaction accounts.

VIII. REGULATION Z AND PREPAID CREDIT PRODUCTS

A. General Approach

62. The Bureau seeks comment both on its general approach to credit products and to the specific changes proposed. In addition, the Bureau seeks comment on certain potential implications of its proposed approach. [79 Fed. Reg. 77212]

Response – The Bureau generally proposes to treat prepaid cards with overdraft features as credit cards and otherwise subject to Regulation Z. This treatment also generally would apply to a prepaid card that is solely an account number as well as to an account number where extensions of credit are permitted to be deposited directly only into particular Prepaid Accounts specified by the creditor. In these comments, rather than repeating the lengthy references to prepaid cards that are solely account numbers and account numbers where extensions of credit are permitted to be deposited directly only into particular Prepaid Accounts specified by the creditor, we simply refer to these collectively as "associated account numbers".

The NBPCA urges the Bureau to reconsider its proposal to treat all prepaid cards and associated account numbers with overdraft features as credit cards and otherwise subject to Regulation Z. We recognize that the Bureau has concluded that greater consumer protections are needed when a prepaid cardholder can incur a debt. We also understand that the Bureau is concerned that less stringent rules might leave the door open for some card issuers to avoid important consumer protections by developing new product structures, heretofore unseen. We believe, however, that the Bureau can address these concerns with more finesse and with less harm to consumer choice and the prepaid card market.

The NBPCA believes that if the Proposed Rule is adopted with its current language, including the proposed revision to the Official Staff Interpretations, the progress made in reducing confusion for consumers about the differences between prepaid and credit card products could be severely damaged. Tremendous effort and progress has been made in educating consumers about the difference between prepaid cards and credit cards, and we believe these changes would be counterproductive to those efforts. The NBPCA fears that the progress made to educate consumers will languish if prepaid cards are included in the definition of "credit card," and that the resulting confusion will: (i) create unnecessary financial and compliance burdens; (ii) remove a critical access point to the financial mainstream by discouraging financially overlooked and underbanked consumers from obtaining and using prepaid cards, or even worse (iii) mislead consumers into purchasing prepaid cards because they believe that they are credit cards.

We are not fundamentally differing with the Bureau's desire to regulate under Regulation Z true lines of credit that are accessible only by a prepaid card or associated account number. Again, however, we believe that overdraft features are fundamentally different from lines of credit and deserve to be treated as such. Certainly where a prepaid card becomes the sole device for obtaining an advance from a line of credit, we would agree that the card is a "credit card." However, we believe the definition and Official Staff Interpretations already dictate this result.[62] We also believe that when the prepaid card acts only as an alternative to a traditional asset account and is only one option for consumers to transfer and use funds from a credit account, then that prepaid card should not be saddled with Regulation Z requirements that would not apply to the (competing) asset accounts. In any case, we could support an addition to the Official Staff Interpretations if it is necessary to make clear that in the case of an access device that is the sole means to obtain an advance from a line of credit, that access device is a "credit card." We would recommend that any such clarification use the term "access device" to avoid creating an impression the prepaid cards are credit cards and to remain consistent with the Bureau's approach to "apply [consumer protections] evenly across like products."[63] If the Bureau remains true to this purpose, the NBPCA does not believe any other changes to Regulation Z would be necessary, as they would already apply via this definition. Furthermore, re-characterizing a prepaid card as a "credit card" without similar treatment for a debit card would be an irrational distinction based on the payment device rather than the underlying functionality. Adoption of our recommended approach will avoid placing the Bureau in a position where it must constantly monitor innovation in the marketplace as the lines between payment devices continue to blur.

In addition, we ask the Bureau to reconsider its proposal to the extent that it would cause all prepaid cards (and associated account numbers) to be credit cards or otherwise subject to Regulation Z solely due to the fact that the cardholder can incur an overdraft that he or she is contractually obligated to repay. As explained below, many overdrafts are in fact unavoidable by cardholders and the industry, and these fundamental systems limitations should not be the driving force in the treatment of prepaid cards.

With regard to all of our concerns, it is not entirely clear in all cases exactly what the Bureau intends. This is particularly so with respect to the interplay between various prepaid card fees and overdraft transactions and when those fees cause the prepaid card or its associated account number to be a credit card or otherwise subject to Regulation Z. As explained below, we are requesting clarification of the Proposed Rule in several areas.

In addition, we believe that the Proposed Rule and Commentary regarding the treatment of prepaid cards and associated numbers are not consistent with certain of the Bureau's comments in the Supplementary Information, raising possible ambiguities. In particular, this concern arises on connection with credit offered by third parties where funds from the loan or line of credit are loaded to a prepaid card. While certain of the Bureau's comments in the Supplementary Information would suggest that the Bureau does not intend that prepaid cards and their associated account numbers be treated as credit cards and otherwise subject to Regulation Z when a consumer arranges for a third party creditor to load loan funds to the consumer's prepaid account, the proposed regulations and

[62] Regulation Z Official Staff Interpretations, 12 CFR 1026.2(a)(15)(ii)(C) (concluding stating, "if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).")
[63] 79 Fed. Reg. 77128 (December 23, 2014).

Commentary could be interpreted otherwise. To avoid a situation in which a consumer can obtain a financial product (i.e., a loan) from one institution and then use it in a manner which causes another financial institution's product (i.e., a prepaid account) to become something it never intended, the NBPCA urges the Bureau to clarify that a prepaid card or associated account number does not become a credit card or otherwise subject to Regulation Z solely because a consumer arranges for a transfer of loan funds to the prepaid card account without any direct involvement of the prepaid card issuer.

Finally, we believe that some of the Bureau's assumptions regarding how prepaid cards function are flawed and would lead to what we hope are unintentional consequences to the prepaid card industry.

Because the NBPCA fundamentally believes that prepaid cards and accounts with overdraft features should not be treated as credit cards or credit card accounts under an open-end (not home-secured) consumer credit plan, and that at a minimum the Proposed Rule needs to be revised to clarify that force-pay transactions will not convert a prepaid card or associated account number into a credit card or otherwise be subject to Regulation Z, we are not providing a response to many of the Bureau's specific requests for comment. We would like, however, to comment on the several portions of the Bureau's Proposed Rule and their likely impact on prepaid products and services.

B. Military Lending Act

63. The Bureau requests comment on the consequences, if any, from the combined effect of the two proposals with respect to overdraft services and credit features on Prepaid Accounts held by military service members. [79 Fed. Reg. 77212]

Response – Because the NBPCA fundamentally believes that Prepaid Cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

C. Multi-Purpose Cards and Card Network Rules

64. The Bureau seeks comment on these specific amendments and whether further amendments or guidance would be appropriate. For instance, while there is regulatory precedent for similar multipurpose debit/credit card products, these cards do not appear to be in wide use today. *See, e.g.*, comment § 1026.12(a)(1)-7 (stating that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request). [79 Fed. Reg. 77213]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

- The Bureau also seeks comment on consumer and industry experiences with similar multipurpose products historically, and whether they may yield useful lessons for further refining the Bureau's proposal with regard to prepaid cards.

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

- Finally, the Bureau notes that card network rules may treat a card differently depending on whether it accesses an asset account or a credit account. The Bureau's proposal could result in an increase in the number of cards that can access both an asset account and a credit account, and the Bureau requests comment on any card network rule issues that might arise from its proposal to treat most credit plans accessed by prepaid cards, for which finance charges are imposed, as open-end credit accessed by a credit card under Regulation Z.

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

Definitions and Rules of Construction

D. Definition of Credit

65. The Bureau generally solicits comment on the definition of credit with respect to Prepaid Accounts. [79 Fed. Reg. 77217]

Response – The NBPCA and its members have serious concerns regarding the Bureau's proposed definition of credit.

a. Because of the inability of issuers to block all overdrafts, the Proposed Rule as written would require all open-loop prepaid cards to comply with all of the provisions of the Proposed Rule applicable to Prepaid Accounts containing credit features. The NBPCA therefore asks the Bureau to revise the Proposed Rule to exempt transactions where an issuer cannot block an overdraft.

The Bureau's definition of credit encompasses both (1) transactions that are authorized where the consumer has insufficient or unavailable funds in the Prepaid Account at the time of authorization; and (2) transactions on a Prepaid Account where the consumer has insufficient or unavailable funds in the Prepaid Account at the time the transaction is paid. The NBPCA believes this broad definition, accompanied by the proposed new definition of "finance charge", will have the effect of causing all open-loop prepaid cards to involve credit, all open-loop prepaid cards to be credit cards, and all issuers of such cards to be creditors. Moreover, the NBPCA believes there is nothing prepaid card issuers could do to avoid that result. If the Proposed Rule is not substantially revised to avoid this result, some providers may be forced to exit the prepaid marketplace due to the substantial costs of compliance.

i. Force-Pay Transactions

No issuer of open-loop prepaid cards can ensure that all transactions will be declined where the consumer has insufficient or unavailable funds, whether at the time of the transaction or when the transaction is paid, as discussed further below. Moreover, many issuers of open-loop cards will charge transaction fees and sometimes monthly fees. The pairing of these two factors is particularly problematic given the proposed revisions to the definition of finance charge that appear to include at least transaction fees and possible monthly or other periodic fees (but see further discussion below on periodic fees) on a prepaid card account, as well as any transaction fees, even if those fees are exactly the same in amount whether or not the account has a credit feature.

We understand that the Bureau has stated informally that they do not intend to treat monthly fees on a prepaid card account as finance charges for this purpose, but does propose to treat all transaction fees as finance charges. The Proposed Rule does not make this distinction clear. In particular, the proposed definition of finance charge would include any fee "for credit availability," which could be construed as including a monthly fee for the availability of the prepaid account itself given that issuers of open-loop prepaid card accounts cannot prevent force-pay transactions from overdrawing the account and therefore credit is necessarily "available."

Even if the Proposed Rule were clarified so that only transaction fees would be finance charges, the NBPCA believes that the broad interpretation of what constitutes a finance charge, paired with the inability of issuers to block every single transaction without payment where a consumer has insufficient or unavailable funds, will have the effect of turning all open-loop prepaid cards into credit cards subject to all of the applicable requirements of the NPRM.

It is important to note that issuers of open-loop prepaid cards are required by card network rules to pay all transactions that clear through the network and are presented to the issuer, absent merchant fraud or other narrow exceptions. The purpose of this rule is to provide confidence to merchants that debit and open-loop prepaid card transactions will be paid and the rule is therefore necessary to the functioning of the network payment system. While an issuer can know in some cases that a consumer is attempting to make a transaction with insufficient funds and decline the authorization for that transaction, there are many situations, known as "force-pay" transactions, where that is not possible. In fact, in the case of force-pay transactions, an account can become overdrawn despite all issuer precautions. For purposes of illustration, the following describes possible and common scenarios where a prepaid card account could become overdrawn despite neither the cardholder nor the card issuer intending to let that occur:

(i) <u>Prepaid Card Used at a Gas Pump</u>:

- A cardholder has an available balance of $60.00 and uses his or her card at an automated fuel pump.
- Pursuant to industry practice, the merchant submits a $1.00 pre-authorization to validate the card.
- The transaction is authorized because funds are sufficient for the pre-authorization amount and the additional amounts held by the issuer for the transaction.
- The cardholder purchases $70.00 worth of gas.

- Later that day, the merchant submits the full gas purchase amount. Because the purchase amount is more than $60.00, it would overdraw the account when posted.

(ii) Prepaid Card Used at a Restaurant:

- A cardholder has an available balance of $50.00 and uses his or her card at a restaurant.
- The merchant submits an authorization for $40.00 for the amount of the meal.
- The issuer adds another 20% ($8.00) to the transaction hold to account for a possible tip.
- Since funds are sufficient for the amount of a meal plus an estimated tip, the transaction is authorized.
- The cardholder leaves a 30% tip.
- The restaurant later settles the transaction for $52.00.
- The $52.00 transaction posts against the account and causes the balance to become overdrawn.

(iii) Delay in Settlement of any Prepaid Card Transaction:

- A cardholder makes a $200.00 prepaid card purchase and has sufficient funds ($250.00) at the time the transaction is authorized.
- The authorized amount is withheld from the cardholder's available balance as a pending transaction.
- There is a delay of several days for the merchant to submit the charge, which extends beyond the allowable time period for the issuer's authorization hold to remain on the account.
- The issuer releases the hold.
- The cardholder makes a $150.00 purchase, which quickly clears.
- When the original $200.00 transaction is finally received at the bank, funds are no longer sufficient because of the other posted activity, and the transaction overdraws the account by $50.00.

(iv) Provisional Credit from Merchant Dispute:

- A cardholder has a Prepaid Account balance of $50.00 in an account subject to Regulation E through the Treasury Federal Payments Rule, and the cardholder disputes a merchant charge of $20.00.
- The issuer grants a provisional credit of $20.00 while the dispute is being investigated, as is required by Regulation E when the issuer is unable to complete its investigation within 10 business days.
- The cardholder subsequently makes a purchase of $60.00 from a gas retailer while the cardholder account has a $70.00 balance (assumes no other loads or purchases/ATM withdrawals for purposes of example).
- The gas retailer settles the transaction for $60.00.

- The dispute is resolved in favor of the original merchant, and the $20.00 provisional credit is deducted from the cardholder's Prepaid Account balance five days after notice to the cardholder of the pending reversal of the credit.
- The posting of the reversal of the provisional credit against the account causes the balance to become negative $10.00.

(v) Dishonored Check Used to Load Card:

- A cardholder has a balance of $50.00 and deposits a $100 check into his or her account. The $100.00 is made available to the cardholder.
- The cardholder spends $60.00 using his or her card.
- The check used to load the additional $100.00 is not honored by the bank on which it is drawn.
- The dishonor of the check causes the cardholder's Prepaid Account to be overdrawn by $10.00.

In light of these real world possibilities, which occur every day across America, unless an issuer opts to charge no fees whatsoever for a Prepaid Account and does not require consumer reimbursement for overdrafts, all open-loop prepaid cards would unavoidably become credit cards under the Bureau's proposed definitions of credit, credit card, and finance charge. All open-loop prepaid products would be subject to the Proposed Rule's requirements for Prepaid Accounts containing credit features, and it would appear once a single transaction in a Prepaid Account is deemed to constitute "credit," that account would be considered a "credit card" for the rest of the account relationship. Such a result would effectively destroy the open-loop prepaid card market. In light of this, the NBPCA asks the Bureau to revise the Proposed Rule to exempt all force-pay transactions, similar to those described above, from being treated as "credit" under the Proposed Rule. The NBPCA further asks the Bureau to exclude any transaction fee charged in the normal course of usage, and not specifically for the account going negative, from the definition of "finance charge."

ii. Definition of Finance Charge

The unavoidability of these force-pay transactions is exacerbated by the Proposed Rule's definition of "finance charge" and what fees are covered or not covered under this definition. Specifically, the Proposed Rule defines "finance charge" to include any "charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a Prepaid Account in connection with credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular Prepaid Accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the Prepaid Account, to have access to the Prepaid Account, or when credit is not extended". Section 1026.4(c)(4) of the Proposed Rule would exclude from the definition of "finance charge" those fees charged for "participation in a credit plan, whether assessed on an annual or other periodic basis", but provides that this exception would not apply to credit accessed by a prepaid card or certain account numbers.

This definition of "finance charge" is problematic because it is unclear how a prepaid card or associated account number is treated when there are routine monthly fees charged for account maintenance, routine withdrawal fees, or fees for purchase transactions. This lack of clarity makes it very difficult to determine if force-pay transaction, such as those described above, constitutes an extension of credit subject to the requirements of the Proposed Rule.

For example, suppose a prepaid card provides for a $3 fee to open the account and a monthly fee of $5. Suppose also that this account is not associated with an intentional overdraft line of credit, but that for the reasons described above, a force-pay transaction can occur. Suppose also that the card issuer is unwilling to waive all ability to recover the amount of the inadvertent overdraft, thus eliminating the defense that no "credit" is extended when the overdraft occurs. In these circumstances, does the prepaid card become a credit card the instant an overdraft first occurs simply because of the existence of the account opening fee and monthly fee? The Bureau states in supplementary information that "fees that are levied *for* overdraft services" are finance charges, which might indicate an intent that fees for the Prepaid Account itself are not finance charges.[64] However, the Proposed Rule defines "finance charge" to include any fee "for credit availability", which could mean that any fee imposed on the account would be a finance charge if overdrafts can ever occur on the account. Supporting this interpretation is the fact that the exception contained in Section 1026.4(c)(e) for fees charged "for participation in a credit plan, whether on an annual or other periodic basis" would not apply to credit accessed by a prepaid card or associated account number.

We understand that the Bureau has stated informally that they did not intend to treat monthly or other periodic fees as finance charges, at least unless those fees were specifically imposed for a credit feature, but the Proposed Rule seems to provide otherwise and a clarifying official comment or regulation is needed to address that ambiguity, as discussed above. In any case, we understand that the Bureau did intend to treat all transaction fees as finance charges when imposed in connection with an extension of credit, even if the transaction fee were in the exact same amount for a transaction when no credit was extended.

If it was the Bureau's intent to cause prepaid cards and associated account numbers to be credit cards or otherwise subject to Regulation Z even when only force-pay transactions can occur, we strongly urge the Bureau adopt an alternate approach that does not penalize a card issuer for charging account-opening or periodic fees on cards where network payment system-induced overdrafts cannot be avoided. If this was not the Bureau's intent, we strongly urge the Bureau to make this explicit in the final rule or in related Official Interpretations.

b. <u>The NBPCA requests that the Bureau revise the Proposed Rule to allow for some discretionary overdraft plans</u>.

The NBPCA does not believe that there is any compelling policy reason to treat prepaid cards (and associated account numbers) as credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan simply because the card issuer chooses from time to time to allow and pay a transaction that causes the cardholder's account balance to go negative or that is authorized when the account balance is negative.

[64] 79 Fed. Reg. 77206 (December 23, 2014).

The Bureau recognizes that, for at least some consumers, the lack of access to checking and other types of more established financial products and services appears to be the "key driver" of their use of GPR Cards.[65] The Bureau also notes that a number of consumers who use prepaid products with overdraft services voiced support for such services.[66]

The Bureau also recognizes that GPR Card providers that offer overdraft features generally charge lower fees than the fees charged by depository institutions or credit unions for checking or share account overdraft.[67] The Bureau notes further that certain issuers of prepaid products with overdraft services routinely (i) waive the overdraft fee if the consumer repays the overdraft quickly or if the overdraft is for a nominal amount; (ii) limit the number of permitted overdrafts in a month and the amount by which the account can go negative; and (iii) require a "cooling off" period after a consumer has incurred more than a specified number of overdrafts.[68]

The Bureau also understands consumers that currently use GPR Cards increasingly decide they no longer want to have traditional financial products and services, such as a checking account.[69]

The NBPCA notes that certain prepaid card programs are already subject to Regulation E protections from unauthorized transactions, and these protections are often better than a consumer would receive with fraudulent checks. Under the Uniform Commercial Code (**"UCC"**), consumers can be liable for negligence contributing to forged check signatures or alterations.[70] Regulation E, in contrast, provides that consumer negligence cannot be used as the basis to impose greater liability than is permissible under Regulation E.[71] Likewise, if a consumer fails to identify the consumer's unauthorized signature or alteration of a check by the same wrongdoer, the consumer can be liable under the UCC for all checks forged or altered by that wrongdoer after 30 days.[72] Under Regulation E, the consumer's liability for unauthorized transactions resulting from the loss or theft of a debit card can never exceed the lesser of $500 or the sum of the unauthorized transfers that occur after the close of two business days after learning of such loss or theft and before the consumer notifies the Prepaid Account issuer, but even then only if the Prepaid Account issuer can establish that the unauthorized transfers would not have occurred had the consumer notified the Prepaid Account issuer within two days after the loss or theft of the Prepaid Account. Card network "zero liability" policies also provide additional protections for unauthorized transactions involving network-branded prepaid products.

All of these factors suggest that GPR Cards should be encouraged as an alternative to checking accounts, yet the Bureau's proposal would greatly increase the burdens of Prepaid Accounts with overdraft features, thereby discouraging institutions from offering them and limiting consumer choice.

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[65] 79 Fed. Reg. 77105 (December 23, 2014).
[66] 79 Fed. Reg. 77205 (December 23, 2014).
[67] 79 Fed. Reg. 77106 and 77111 (December 23, 2014).
[68] 79 Fed. Reg. 77112 (December 23, 2014).
[69] 79 Fed. Reg. 77106 (December 23, 2014).
[70] UCC 3-406.
[71] Regulation E Comment 1005.6(b)-1.
[72] UCC 4-406(d)(2).

While we recognize the Bureau's admirable aim of protecting consumers from potentially harmful financial products and services, we believe this aim can be addressed without causing Prepaid Accounts and account numbers to be credit cards or open-end (not home-secured) credit plans. For example, any of the following rules, together or in combination, could provide valuable consumer protections without altering the historical treatment of Prepaid Accounts and associated account numbers:

- A rule that applies Regulation E protections to all Prepaid Accounts, by applying the Regulation E section 1005.18 standards that now apply to Payroll Card Accounts. As the Bureau notes, many program managers of GPR Card programs with overdraft or credit features already structure their products to comply with Regulation E's overdraft rules,[73] and the NBPCA believes that the majority of Prepaid Account issuers already voluntarily provide the Regulation E protections from unauthorized transactions.

- A requirement that consumers affirmatively opt-in to any overdraft feature, consistent with existing section 1005.17 of Regulation E.

- A cap on the number of overdraft fees in any month.

- A modest cap on the total amount that any account may be overdrawn, perhaps $150.

- A specific requirement that the card issuer prohibit those overdraft fees (or provide a refund) after the consumer has experienced a specified number of overdraft fees in a prescribed period, and a prohibition on overdraft fees on those transactions that cannot be stopped because they are due to "force-pay" transactions as described below.

- A requirement for detailed disclosures to the consumer, before the consumer opts-in, regarding how the overdraft feature works; the amount of fees that may be charged for each overdraft transaction; the maximum number of fees that may be assessed on any single day, month, or other stated period (or if there is no maximum, a statement to that effect); and a disclosure of the opt-in right and how to cancel an opt-in.

- A requirement to disclose the total amount of all overdraft fees charged for the monthly or other period when providing the consumer's account balance by telephone and with each electronic or written history provided under Regulation E.

- A requirement to disclose the total of all overdraft fees charged during the calendar year as part of each electronic or written history provided under Regulation E.

- Assuming that the force-pay issues described in this Comment Letter are corrected, in the case of intentional overdrafts or credit features, a prohibition on advertisements using the terms "safe", "no overdrafts", "no overdraft fees" or any similar terms that imply that the account cannot be overdrawn if overdraft fees may be imposed.

[73] 79 Fed. Reg. 77112 (December 23, 2014).

It is clear from the Proposed Rule that the Bureau is endeavoring to anticipate future product innovations, and trying to ensure that Prepaid Account issuers are not able to develop Prepaid Account products with credit features that circumvent regulatory protections (in this case, Regulation Z). We appreciate this concern on the part of the Bureau and agree that preventing circumvention of the applicable rules is important for consumers. However, if Prepaid Accounts with overdraft and credit features are subject to Regulation Z, we expect that these products will be completely eliminated from the prepaid marketplace. Furthermore, the NBPCA strongly believes that Prepaid Account programs with overdraft or credit features should remain subject to Regulation E with appropriate, common sense consumer protections that protect the availability of these extremely valuable and highly sought after consumer products.

c. Repayment of Overdrafts.

Even if the Bureau does ultimately choose to adopt a rule that would result in prepaid cards being treated as credit cards solely because of an offered discretionary overdraft feature, we urge the Bureau not to adopt a rule that prohibits a card issuer from repaying the overdraft from the next deposit or load to the prepaid card account, regardless of when that occurs, so long as agreed to by the consumer. We believe that the Bureau could take this position consistent with the statutory prohibition of offsets given that Regulation Z specifically allows arrangements in which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account, so long as agreed to by the consumer in writing.[74]

d. Clarification of Disclosure Obligation When Creditor Will Not Seek Reimbursement for Paid Overdraft Transactions.

We believe that "credit" under Regulation Z would not include the amount of an overdraft if the consumer is not contractually obligated to reimburse the card issuer for that overdraft (i.e., the consumer would not be incurring debt or deferring the payment of debt). We believe this also to be consistent with the Proposed Rule. The NBPCA supports such a rule, but requests clarification regarding disclosure obligations. Specifically, the NBPCA anticipates that there will be prepaid cards that elect to allow small overdrafts where the consumer would not be required to reimburse the issuer. If the issuer were to disclose that policy, however, we also anticipate that some consumers would abuse the system and force the issuer to terminate the program rather than being taken advantage of. We therefore request that the Bureau specifically state in the final rule or in related Official Interpretations that no issuer would be required to disclose, as a pre-acquisition disclosure or otherwise, a policy of allowing overdrafts where consumers are not obligated to reimburse the issuer for the overdraft amount.

e. Clarification in Commentary or Regulation Needed Regarding Third Party Credit.

The NBPCA believes that the Proposed Rule creates ambiguity regarding the Regulation Z treatment of prepaid cards and associated account numbers where a consumer arranges with a creditor to have funds from a loan or line of credit loaded to a Prepaid Account. We believe that the Bureau's intent is to treat such prepaid cards and account numbers as credit cards, or credit card accounts under an open-end (not home-secured) consumer credit plan, only where either (i) the

[74] 12 C.F.R § 1026.12(d)(3).

prepaid card issuer is also the creditor and requires that funds from the loan or line of credit be deposited into a Prepaid Account specified by the card issuer; or (ii) a third party is the creditor but the prepaid card issuer has an arrangement with the creditor such that the funds from the loan or line of credit may only be deposited into a Prepaid Account specified by the card issuer. In particular, we believe that it is the Bureau's intent not to treat prepaid cards and associated account numbers as credit cards, or credit card accounts under an open-end (not home-secured) consumer credit plan, where the consumer arranges credit with a third party and chooses to have funds from the loan or line of credit deposited into the consumer's Prepaid Account. If this is not the Bureau's intent, the NBPCA urges the Bureau to reconsider the proposal for the reasons described below. If we are correct as to the Bureau's intent, we urge the Bureau to state this unequivocally either in the final rule or in related Official Interpretations so as to resolve any potential ambiguity.

The Bureau states in the Supplementary Information that the Proposed Rule would apply where credit is being "pulled" by a prepaid card, such as when a consumer uses the prepaid card at point of sale to access an overdraft plan, as well as where credit is being "pushed" to the Prepaid Account, such as where credit is accessed by an account number and the credit is deposited only into particular Prepaid Accounts specified by the creditor.[75] The Bureau also states that it is "not, however, intending to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds."[76] The Proposed Rule and Commentary, however, are subject to a different interpretation.

Existing and proposed Regulation Z define credit card to include any card, plate, or other single credit device that may be used "to obtain" credit.[77] Proposed Regulation Z defines credit card account under an open-end (not home secured) consumer credit plan as, with some exceptions, any open-end credit account that "is accessed" by a credit card.[78] Neither the proposed regulations nor the proposed Commentary defines "to obtain" credit or credit that "is accessed" by a credit card. As a result, if a consumer were to obtain a loan or line of credit and arrange for the loan or line of credit funds to be deposited into his or her Prepaid Account, a subsequent use of the prepaid card or account number for a purchase or withdrawal potentially could be interpreted as a use of the card or account number to "access" or "obtain" credit. If that is not the Bureau's intention, the NBPCA urges the Bureau to state that specifically in the regulation or associated Commentary.

If it is the Bureau's intent that the above transaction will cause the prepaid card or associated account number to be a credit card or a credit card account under an open-end (not home secured) consumer credit plan, we strongly urge the Bureau to change this position in the final rule or in related Official Interpretations. It is crucial to recognize that a card issuer will not be able to control the consumer's choice or the consumer's arrangement with a third party creditor. No card issuer should be in the position of having the character of its prepaid cards and associated account numbers change as the result of the consumer's actions or the actions of a third party creditor without any affirmative action or knowledge of the Prepaid Account issuer.

[75] 79 Fed. Reg. 77213 (December 23, 2014).
[76] 79 Fed. Reg. 77213 (December 23, 2014).
[77] 12 C.F.R. § 1026.2(a)(15)(i)
[78] 12 C.F.R. § 1026.2(a)(15)(ii)

This is equally a concern in the context of Student Cards. The NBPCA understands that it is common for colleges and universities to deposit student loan funds as well as funds from tuition-assistance and grant programs into accounts specified by the student. The fact that the student arranges for loan funds to be deposited into a Prepaid Account should not cause that account (or associated number or prepaid card) to be a credit card or a credit card account under an open-end (not home secured) consumer credit plan. Moreover, we believe that the prepaid card issuer generally would have no ability to tell whether funds deposited by a college or university are credit funds or funds from tuition-assistance or grant programs.

To be clear, we are not discussing those situations where a prepaid card issuer enters into a formal relationship with a creditor for that creditor to make loans to the issuer's prepaid cardholders and to deposit loan or line of credit funds only into Prepaid Accounts held by the issuer. As discussed above, the NBPCA has also requested that the Bureau not treat prepaid cards (and associated account numbers) as credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan when the card issuer provides discretionary overdraft services. Even if the Bureau rejects the NBPCA's request in this regard, we believe that there is a fundamental difference between credit offered by the card issuer or by a third party under agreement with the card issuer, and credit offered by a third party where the consumer chooses where to direct the loan funds to be deposited.

f. State Law Implications.

The NBPCA is concerned that the Bureau's expansive language regarding overdrafts being "credit" might lend support to the class action bar's frequent attempts to re-characterize overdraft fees as "interest" or a bank's payment of overdrafts as an extension of "credit" for purposes of state law usury and lender licensing rules. The NPBCA therefore requests that the Bureau include in Regulation Z or the Bureau 's commentary that the treatment of overdrafts as credit for Regulation Z purposes is not intended to imply any similar treatment under state laws.

66. The Bureau solicits comment on the proposal to require a 30-day waiting period before a Prepaid Account may be linked to a credit card plan. The Bureau also solicits comment on the 30 day time frame, and whether a shorter or longer time frame would better accomplish the goals of the provision. [79 Fed. Reg. 77187]

Response – While the NBPCA understands the reasoning behind requiring a 30-day waiting period before linking a prepaid card account to a credit card plan, the NBPCA questions the efficacy of such a proposal and, specifically, the 30-day time frame. The Bureau has stated that the rationale for requiring a 30-day waiting period between the registration of a prepaid card account and any offer of a linked credit account is, in part, to enhance a consumer's understanding of the terms of the prepaid card account. According to the Bureau, such a requirement will help the consumer to make more informed decisions regarding linking a credit or charge account to their prepaid card account. The NBPCA agrees. However, the NBPCA believes this goal can be achieved with a waiting period significantly shorter than 30-days. The NBPCA further believes that a shorter waiting period would better balance a consumer's need for access to credit with the Bureau's goal of encouraging consumers to make informed decisions about obtaining credit.

A significant demographic of prepaid card users are the underbanked. For these users, waiting 30-days for access to credit features that may be needed within a shorter timeframe could be very inconvenient. Such a waiting period may even push these consumers to obtain another, more costly credit options or asset accounts because there are already limited avenues for obtaining credit afforded to consumers without bank accounts. Moreover, the NBPCA notes that the process for providing a credit line under the Proposed Rule is already a far more time-consuming procedure than is currently in place for offering a simple overdraft. Providing a credit feature in compliance with such requirements will already take more time and therefore adding an additional 30-day delay is unnecessary. Furthermore, the Bureau has already acknowledged that this proposed 30-day waiting period provision would be unique to prepaid cards. The NBPCA believes this is another factor indicating that, in addition to being potentially disadvantaging consumers, the 30-day waiting period requirement could significantly restrict prepaid card providers from offering credit in the market as compared to other asset account providers offering similar types of access to credit and credit providers operating without such restrictions.

Given these factors, the NBPCA urges that, to the extent there is a waiting period at all, it be limited to the timeframe of 5 to 10 days. The NBPCA believes such a timeframe is a more reasonable period that strikes the proper balance between enhancing consumers' understanding of their prepaid card accounts and not overly restricting the ability of prepaid card issuers to offer credit features and prepaid card users to obtain them.

Finally, the NBPCA notes that, in the case of force-pay transactions as discussed in our response to Question 65 above, no issuer of open-loop prepaid cards can block all transactions without payment where the consumer has insufficient or unavailable funds, whether at the time of the transaction or when the transaction is paid. In these instances, any waiting period would be impractical, if not impossible, to comply with. We thus again urge the Bureau to clarify the final rule or in related Official Interpretations to exclude these sorts of transactions from coverage under the Proposed Rule's credit provisions.

67. The Bureau solicits comment on whether creditors are likely to establish separate credit accounts, instead of having the credit balance be reflected as a negative balance on the Prepaid Account. The Bureau also solicits comment on any implications for compliance depending on how the account is structured *(i.e.,* whether a separate credit account is created or whether the credit balance is reflected as a negative balance on the Prepaid Account), and whether any differentiation in regulation or guidance would be useful. [79 Fed. Reg. 77217]

Response – The NBPCA believes a credit balance should not be reflected as a negative Prepaid Account balance. The NBPCA points out that, if an account is a "dual" account, the overdraft line of credit would only be accessed if a transaction amount were more than the amount in the Prepaid Account. Such a transaction would create two distinct balances:

(i) $0 Prepaid Account balance;
(ii) A balance on the credit account (which would be subject to CARD Act requirements applicable to credit cards).

The NBPCA thus believes that accounts, and their balances, should remain separate.

68. The Bureau solicits comment on the distinction between a prepaid card account number that is a credit card under proposed § 1026.2(a)(15)(v) and comment 2(a)(15)-2.i.F and an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular Prepaid Account specified by the creditor as defined in proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)-2.i.G. The Bureau also solicits comment on whether there could be situations where a prepaid card account number could be viewed as pushing credit into a Prepaid Account. [79 Fed. Reg. 77218]

Response – As described above, when a prepaid card is only one option for a consumer to transfer and use funds from a credit account and the prepaid card is being used as an alternative to traditional asset accounts, such as a checking account, we do not believe that the protections of Regulation Z are particularly useful, applicable or necessary. As such, the Bureau should clearly state that a prepaid card with this type of credit feature is not a credit card or open-end (not home-secured) credit plan.

69. The Bureau solicits comment *[on the proposal to treat two accounts—credit extensions accessed by a Prepaid Account versus credit card accounts accessed by an account number linked to a Prepaid Account—differently, but only for certain provisions]*, and whether the proposal appropriately covers the types of credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards. The Bureau also solicits comment on whether there are alternative ways to address credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards. Finally, for accounts that permit deposits directly into accounts other than Prepaid Accounts specified by the creditor, and thus would not be covered above under the proposal, the Bureau seeks comment on whether it should attempt to cover such accounts when they are being used by agreement to push funds to cover specific negative balance purchases. [79 Fed. Reg. 77219]

Response – For these arrangements where the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes, the NBPCA believes it would be inappropriate to treat the line of credit (or its associated account number) as a credit card. That consumer choice makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit. Moreover, treating such lines of credit account numbers as credit cards could cause home equity lines of credit to be subject to conflicting rules.

- For example, should the rule cover the following situation as a push account: where the prepaid card issuer and a third-party creditor have an arrangement where the prepaid card issuer will notify the consumer that there are insufficient funds in the Prepaid Account to complete a transaction and contemporaneously prompt the consumer to transfer funds to complete the transaction.

Response – The NBPCA believes the scenario described above is not currently possible. If there are insufficient funds in a Prepaid Account, the customer transaction would be declined and any notice would be after the fact. The transaction flow would be as follows:

(i) The transaction is declined.

(ii) The customer would receive a notice (after the decline). They already know as the transaction was declined.

(iii) The customer could either transfer funds or authorize the overdraft (using mobile app or SMS—outside the authorization process).

(iv) The customer has store personnel to "re-run" the card.

- The Bureau solicits comment on whether there are other types of account structures that the Bureau should consider covering under the rule, and if so, whether the account structure should be considered a "push" account or a "pull account" for purposes of the rule, given that in some cases, different rules would apply under the proposal depending on the how account is structured, as discussed above.

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

70. The Bureau seeks comment on whether it should apply Regulation Z to prepaid cards that only access credit that is not subject to any finance charge and is not payable by written agreement in more than 4 installments. [79 Fed. Reg. 77220]

Response – For the reasons we provided in our response to Question 65, the NBPCA believes that the Bureau's modified definitions of credit and finance charge set up a false distinction between accounts with or without finance charges because very few, if any, open-loop prepaid cards would be offered with absolutely no fees and, because the proposed definition of finance charge would include fees for credit availability. As proposed by the Bureau, the NBPCA believes that there will be very few if any prepaid cards that could access credit and would not be subject to any finance charge.

71. The Bureau seeks comment on the proposal not to except from the definition of credit card those account numbers that are not prepaid cards that may be used to access a credit plan that allows deposits directly into particular Prepaid Accounts specified by the creditor, but does not allow the consumer to direct extensions of credit into asset accounts other than particular Prepaid Accounts specified by the creditor, even when the credit plan is not subject to a finance charge or a fee described in § 1026.4(c) or is payable by written agreement in more than four installments. [79 Fed. Reg. 77220]

Response – The NBPCA understands that part of the Bureau's rationale for this approach is that these transactions would not always be subject to Regulation E, such as where the extension of credit is accessed by check or in person withdrawals, and that it therefore is appropriate that these transactions have the Regulation Z protections for consumers. The NBPCA also recognizes that the Bureau might not be able to amend Regulation E to cover these transactions due to the statutory definition of electronic fund transfer in the Electronic Fund Transfer Act.

The NBPCA believes, however, that treating these account numbers as credit cards goes too far, as discussed in our response to Question 65.

72. The Bureau seeks comment on the proposed approach to treat as "charge cards" those prepaid cards for which no periodic rate is used to compute the finance charge, but with certain amendments that would subject such prepaid cards to rules that are not otherwise applicable to charge cards. [79 Fed. Reg. 77222]

Response – The NBPCA agrees that it would be appropriate to treat such prepaid cards as charge cards. The NBPCA does not believe, however, that it is appropriate to subject such prepaid cards to rules that do not apply to other types of charge card.

73. The Bureau seeks comment to its consideration of requiring real-time opt-in by consumers in order to approve each overdraft or other credit transaction. [79 Fed. Reg. 77178]

Response – The NBPCA agrees that such real-time notifications would be beneficial to consumers in theory, but we believe that such notices are not feasible given existing technology and that such notices could thus never be reliable and therefore would be more likely to lead to consumer confusion. Current processing systems will not necessarily have real time balances and cannot be depended upon for providing on real-time notices with any reliability. Further, current terminals are not capable of displaying the required messaging. Thus, it is not clear that the requisite technology is in place to comply with the proposed requirement and thus there is a likelihood that such a requirement could lead to consumer confusion. This is particularly true in the case, as discussed above, of force-pay transactions. As noted above, force-pay transactions will occur and there is not anything that a card issuer can do to ensure otherwise. It therefore is important that consumers never be led to believe that real-time notices will always be provided. Moreover, even if the card issuer clearly discloses that real-time notifications will not always be provided, the fact that they could be provided for the majority of transactions will lead consumers over time to believe that the notices are more reliable than in fact they are.

74. The Bureau solicits comment on whether gift cards, Government Benefit Card Accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards should be included within the definition of "Prepaid Accounts" for purposes of Regulation Z, even if those accounts would not be considered Prepaid Accounts for purposes of error resolution, disclosure, and other purposes under Regulation E. [79 Fed. Reg. 77223]

Response – The NBPCA first points out that gift cards are properly excluded from the requirements of the Proposed Rule and should not be included within the definition of "Prepaid Accounts" for purposes of Regulation Z. The NBPCA further believes that Government Benefit Card Accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards should not be treated as prepaid cards under Regulation Z. These cards provide unique benefits to consumers and should not be burdened by Regulation Z. The NBPCA also agrees that these cards are not currently offered with credit features, and unless and until there is a clear change in the industry, including these cards in Regulation Z would be premature. The NBPCA therefore believes that the better approach would be to revise Regulation E so as to include these cards and their associated accounts.

75. The Bureau solicits comment on current and potential credit features that may be offered on these types of gift cards, Government Benefit Card Accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards, the nature of potential risks to consumers if credit features were offered on these types of cards, and incentives for the industry to offer credit features on these types of cards. [79 Fed. Reg. 77223]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

- The Bureau also solicits comment on any implications of treating these products as Prepaid Accounts under Regulation Z but not Regulation E.

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

76. The Bureau proposes to treat as a credit card account under Regulation Z all credit plans that permit a customer to access the credit plan by use of checks or in-person withdrawals, so long as the credit plan allows deposits directly into particular Prepaid Accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into an asset account other than particular Prepaid Accounts specified by the creditor. However, the Bureau "is not attempting to cover general lines of credit where consumers generally are not restricted from depositing directly credit extensions taken under the plan into asset accounts of their choosing, including Prepaid Accounts." The Bureau solicits comment on this approach, and whether the proposal appropriately covers the types of credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards. [79 Fed. Reg. 77223]

Response – As discussed in our response to Question 65, we believe that (i) prepaid cards and their associated account numbers should not be treated as credit cards or credit card accounts under an open-end (not home-secured) consumer credit plan solely because of force-pay transactions; (ii) the final rule should allow for some discretionary overdraft plans, with appropriate consumer protections as we have outlined; and (iii) third party credit arrangements where the consumer chooses to have funds from the loan or line of credit deposited into a Prepaid Account should not result in the prepaid card, account or associated account numbers being treated as credit cards or credit card accounts under an open-end (not home-secured) consumer credit plan.

If, contrary to our views and requests, the Bureau issues a final rule that treats prepaid cards and associated account numbers as credit cards and credit card accounts under an open-end (not home-secured) credit plan due to discretionary overdraft plans, the NBPCA believes that the Bureau should draw a distinction between a preauthorized check that is issued to the consumer after or immediately before the consumer has a zero or negative Prepaid Account balance and checks that are made available to the consumer as part of the account, even if the funds must be loaded to particular Prepaid Accounts. In the latter case, the checks are simply a traditional means for a consumer to access a line of credit. The NBPCA also notes that the consumer would not be

prevented from immediately spending the funds in the Prepaid Account, or withdrawing those funds at an ATM if the consumer wants cash. The NBPCA sees no reason why the order in which the consumer accesses the funds from a line of credit should determine whether a prepaid card is treated as a credit card or credit card account under and open-end credit plan.

77. The Bureau proposes to retain the current interpretation of the finance charge criterion for the term "open-end credit" which would result in most charge card accounts meeting the definition of "open-end credit" if a transaction fee, participation fee or other finance charge may be imposed on the credit plan. The Bureau solicits comments on this approach. [79 Fed. Reg. 77226]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

E. Finance Charge

78. The Bureau seeks comment on the treatment of finance charges, whereby fees that are imposed to access the funds in a Prepaid Account or to hold the Prepaid Account are not relevant in deciding whether transaction or service charges imposed on a Prepaid Account for credit are "finance charges" under § 1026.4(a), and its benefit and costs for consumers, industry, and alternative approaches, if any. [79 Fed. Reg. 77229]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

F. Periodic Statements

79. The Bureau recognizes that with respect to transactions made with a prepaid card that access an overdraft credit line, a single transaction may involve both a withdrawal of funds from the Prepaid Account and a credit extension, and that this would result in part of the transaction being reflected on the Regulation E periodic statement and the other part on the Regulation Z periodic statement. [79 Fed. Reg. 77232]

- The Bureau solicits comment on whether this situation currently presents itself in relation to transactions on overdraft lines of credit accessed by debit cards and if so, how creditors typically disclose these transactions on periodic statements under Regulation E and Z. [79 Fed. Reg. 77232]

Response – As discussed in our response to Question 65, NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question.

If the Bureau rejects the NBPCA's suggestions in this regard, we would nonetheless urge the Bureau not to impose a Regulation Z periodic statement requirement in addition to the Regulation E statement requirement. This would result in a consumer receiving two separate statements for what a typical consumer would consider to be a single account. Rather than facilitating consumer understanding, the dual statements would add to consumer confusion. We also believe that the Regulation E statement requirement could be modified to disclose the minimal finance charge and payment information that otherwise would be included in a Regulation Z statement.

Also, the Bureau has acknowledged that prepaid card issuers that offer overdraft features generally charge lower fees than the fees charged by depository institutions or credit unions for checking or share account overdrafts.[79] A requirement that those card issuers deliver a separate Regulation Z statement would increase the costs to prepaid card issuers, increase the costs to consumers for Prepaid Account overdraft programs, and discourage prepaid issuers from offering the product, all without any meaningful additional protections to consumers.

- The Bureau also solicits comment on whether, for these types of transactions, the Bureau should consider a disclosure that would appear on the Regulation Z periodic statement that would notify consumers when a particular transaction is funded partially through the Prepaid Account and partially funded through credit so that consumers would know to look at the Regulation E periodic statement or account history for additional information related to that transaction. [79 Fed. Reg. 77232]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

G. Identifying Transactions on Periodic Statements

80. For a transaction that involves both credit for a purchase and cash-back credit, the proposal would require that the periodic statement reflect the entire transaction as "sale credit", in part on the theory that creditors will not always be able to identify which portion was for a portion and which portion was for the cash back. The Bureau solicits comment on this approach. [79 Fed. Reg. 77235]

Response – The NBPCA believes that Regulation Z periodic statements in addition to Regulation E statements should not be required in these circumstances, as discussed in our response to Question 79. In addition, the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, as discussed in our responses to Question 65.

[79] *See* 79 Fed. Reg. 77106 and 77111.

H. Special Credit Card Provisions

81. The Bureau solicits comment on what, if any, operational issues might arise from applying the protections in § 1026.12(c) to overdraft credit plans that are accessed by prepaid cards. These protections generally allow a consumer to assert against a card issuer a claim or defense for disputes as to goods or services purchased with a credit card. These rights generally do not apply to purchases effected by use of either a check guarantee card or debit card when used to draw on overdraft credit plans, but the Bureau proposes not to apply this exemption to prepaid cards. [79 Fed. Reg. 77238]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

- The Bureau solicits comment on what operational issues, if any, might arise as a result of applying § 1026.12(c) to transactions that are partially funded from the Prepaid Account and partially funded with credit. [79 Fed. Reg. 77238]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

82. Regarding the Bureau's belief that all of the indicia in proposed comment 12(d)(2)-2.ii, including delineating a specific dollar amount as being subject to the security interest, will help to ensure that a security interest arrangement does not circumvent the offset provision in TILA section 169 by ensuring that consumers focus careful attention on the consequences of granting the security interest so that consumers are better prepared to manage their accounts to both cover daily expenses and repay any credit extensions, the Bureau solicits comment regarding: [79 Fed. Reg. 77240 – 41]

- This approach.
- Whether the Bureau should engage in consumer testing of disclosures that describe security interests in connection with Prepaid Accounts to develop model language or model forms for presenting this information.

- Whether these additional protections are sufficient to ensure that security interests do not become the functional equivalent to an offset when a credit card account is directly linked to a Prepaid Account through an overdraft feature or through a separate account where extensions of credit are permitted to be deposited directly only into particular Prepaid Accounts specified by the creditor.

- If these additional protections are not sufficient, on what additional protections would be sufficient to ensure that the security interests taken in Prepaid Accounts are consensual.

- Alternatively, whether it should prohibit a card issuer from obtaining or enforcing any consensual security interest in the funds of a cardholder held in a Prepaid Account with the

card issuer, to ensure that card issuers cannot circumvent the prohibition on offsets by taking routinely a security interest in the Prepaid Account funds without consumers being aware that the security interest is being taken.

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

83. The Bureau solicits comment on situations where at the time a preauthorized payment is set to occur, the Prepaid Account does not have sufficient funds to cover the amount of the credit card payment. [79 Fed. Reg. 77242]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

84. The Bureau solicits comment on whether additional provisions are needed to avoid circumvention, such as requiring card issuers to adopt policies and procedures reasonably designed to ensure that its affiliates, service providers, or commercial entities with whom the card issuer has a contractual relationship do not make a solicitation or provide an application as described in § 1026.12(h)(1) to the consumer during the 30-day interval. [79 Fed. Reg. 77243]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule

I. Billing Error Resolution

85. With regard to the belief that it is appropriate to apply the error resolution procedures in Regulation E generally to transactions that debit a Prepaid Account but also draw on an overdraft plan subject to subpart B, the Bureau specifically solicits comment on the approach, and any operational issues that might arise under this approach. [79 Fed. Reg. 77246]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

J. Limitations on Fees

86. The Bureau seeks comment on whether additional amendments to the regulation or commentary would be helpful to effectuate its interpretation of the statute or to facilitate compliance. For example, the Bureau seeks comment on whether it would be helpful to mandate

the disclosure to consumers of the initial credit line that is made available under the terms of the account, including any linked credit accounts. [79 Fed. Reg. 77248]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

87. The Bureau requests comment on whether, once a credit card account has been added to a prepaid card, it should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction, notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized. [79 Fed. Reg. 77249]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Question 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

K. Reporting and Marketing Rules for College Student Open-End Credit

88. The Bureau requests comment on the proposal the proposal to add or amend the comments to provide that the provisions apply to the issuance of Prepaid Accounts that do not have credit card accounts linked to them at the time the Prepaid Accounts are opened, if credit card accounts may be linked to the Prepaid Accounts in the future. [79 Fed. Reg. 77251]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 61 and 65 for a detailed discussion of our comments on this portion of the Proposed Rule.

IX. MISCELLANEOUS REGULATION E PROVISIONS

89. The Bureau seeks comment on the proposed rule's limits on liability for unauthorized use and to billing errors procedures, or whether there are any other preferable approaches to determining how the liability limitations and error resolution procedures in Regulations E and Z should apply to transactions that debit Prepaid Accounts. [79 Fed. Reg. 77140]

Response – Except as otherwise provided herein, the NBPCA supports the Proposed Rules limits on liability for unauthorized use and billing error procedures. We are not aware of any other preferable approaches.

90. The Bureau seeks comment on the addition of a comment to discuss federal preemption of certain Tennessee and Michigan unclaimed property laws. [79 Fed. Reg. 77140]

Response – The NBPCA has no comment with regard to this question.

91. The Bureau requests comment on recent developments regarding savings features and whether future regulation might be warranted. [79 Fed. Reg. 77255]

Response – The NBPCA does not believe savings features associated with prepaid cards are prevalent in the marketplace. As such, the NBPCA does not believe future regulation is warranted.

92. The Bureau seeks comment on its approach to the effective date of this proposal, whether it should be simplified and whether the proposed time periods are appropriate, should be lengthened, or should be shortened. [79 Fed. Reg. 77256]

Response – The NBPCA and its members have serious concerns about the proposed effective date of 9 months after publication of the final rule in the Federal Register. Based on the number of changes required for card packaging and websites, the level of software development necessary to calculate transactions and fees in the manner described in the Proposed Rule (which is vastly different that the current requirements under Regulation E), and the substantial operational changes that will be required in response to the final rule, our members believe that a compliance period between 18 and 24 months is a much more appropriate time frame to implement the required changes from such a broad sweeping new regulation. Additionally, it should be noted that, concurrently, the industry is undergoing significant change related to the nationwide roll-out of EMV-enabled POS terminals and EMV-enabled cards. A longer implementation period will ensure that the industry has time to comprehensively implement any operational changes required under the rule, as well as to avoid destroying millions of card packages that have already been produced and are out in market.

IV. SECTION 1022(B)(2) OF THE DODD-FRANK ACT

A. Baseline for Consideration of Benefits and Costs

93. The Bureau requests comment on the preliminary discussion presented below as well as submissions of additional data that could inform the Bureau's consideration of the potential benefits, costs, and impacts of the proposed rule. [79 Fed. Reg. 77256]

Response – The NBPCA's members have expressed that they believe the Bureau's preliminary figures of the costs of pre-acquisition disclosures to providers of retail Prepaid Accounts are substantially lower than what those costs will actually be. Many NBPCA members will be submitting their own comments to the Proposed Rule and we anticipate they will include more specific comments on this issue.

94. Based on its outreach, the Bureau has doubts as to whether, in practice, *negative balance charges* are assessed and requests comment regarding current industry practice. [79 Fed. Reg. 77285, footnote 540]

Response – The NBPCA has no comment regarding whether negative balance charges are assessed in practice.

B. Potential Benefits and Costs to Consumers and Covered Persons

95. The Bureau requests comment and the submission of data that could inform the Bureau's consideration of the effectiveness of the proposed credit-related disclosures on both the short form and long form disclosures, including information about the use of the terms "credit-related," "credit", and "overdraft". [79 Fed. Reg. 77263]

Response – Because the NBPCA fundamentally believes that prepaid cards and Prepaid Accounts with overdraft features should not be treated as credit cards under the Proposed Rule, it has not provided a specific response to this Question. Please refer to our responses to Questions 62 and 65, for a detailed discussion of our comments on this portion of the Proposed Rule.

96. The Bureau requests comment on these preliminary figures as well as the submission of data that could inform the Bureau's consideration of the costs of pre-acquisition disclosures to providers of retail Prepaid Accounts. [79 Fed. Reg. 77267, footnote 443]

Response – As noted above, the NBPCA's members have expressed that they believe the Bureau's preliminary figures of the costs of pre-acquisition disclosures to providers of Prepaid Accounts are substantially lower than what those costs will actually be. Many NBPCA members will be submitting their own comments to the Proposed Rule and we anticipate they will include more specific comments on this issue.

C. Potential Specific Impacts of the Proposed Rule

97. The Bureau solicits comment regarding the proposed rule's impact on those depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by institutions of larger size. [79 Fed. Reg. 77282]

Response – The NBPCA has no comment regarding the Proposed Rule's impact on depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by larger institutions.

98. The Bureau requests comment regarding the effect of the proposed rules on consumers in rural areas. [79 Fed. Reg. 77282]

Response – The NBPCA has no comment regarding the effect of the Proposed Rule on consumers in rural areas.

D. Request for Information

99. The Bureau asks interested parties to provide comment on various aspects of the proposed rule, as detailed in the section-by-section analysis discussion above. The Bureau specifically requests precise cost or operational data that would permit it to better evaluate the potential implementation costs and ongoing operational costs imposed by the proposed provisions as well as any alternatives under consideration. The most significant of these include information or data addressing: [79 Fed. Reg. 77282]

- The benefits and costs associated with the proposed provisions addressing overdraft services and other credit features offered in connection with Prepaid Accounts;
- The impact of the proposed provisions addressing overdraft services and other credit features on consumer access to credit;
- The benefits and costs associated with extending provisional credit to all covered accounts;
- The impact of extending provisional credit to all covered accounts on consumer access to Prepaid Accounts generally;
- The benefits and costs associated with implementing the disclosure requirements articulated in the proposal;
- The Study of Prepaid Account Agreements and the extent to which its findings are or are not representative of the market for Prepaid Accounts as a whole; and
- The impact of the proposed rule on consumers in rural areas and specifically how these impacts may differ from those experienced by other consumers.

Response – The NBPCA appreciates the opportunity to comment on and respond to all of the issues raised above. Please see our answers to the specific questions above for answers to all of the points raised in by the Bureau in this Question 99.

E. Impacts of Proposed Provisions on Directly Affected Entities

100. Based on its outreach, the Bureau has doubts as to whether, in practice, negative balance charges are assessed and requests comment regarding current industry practice. [79 Fed. Reg. 77285, footnote 540]

Response – The NBPCA has no additional information regarding whether negative balance charges are assessed in practice.