



April 5, 2017

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

Re: Request for Public Comment Regarding Delay in Effective Date for Final Prepaid Accounts Rule [Docket No. CFPB-2017-0008]

Dear Ms. Jackson:

Financial Innovation Now (“FIN”)<sup>1</sup> appreciates the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed rule that would delay to April 1, 2018 the effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (“Prepaid Rule”).<sup>2</sup>

FIN supports the Bureau’s proposal to delay the effective date of the Prepaid Rule. In particular, FIN supports the Bureau’s continuing efforts to meet with industry participants and to consider “unanticipated complexities” arising from changes to the Prepaid Rule that were not fully appreciated during the earlier public comment period.<sup>3</sup> The appropriate way to address “unanticipated complexities” will require consideration by the Bureau as a policy matter, and potentially implementation of additional changes by the industry. This process should also include public comment on any changes to the Prepaid Rule, as adopted. In order to avoid sequential revisions to the effective date, FIN urges the Bureau to extend the effective date of the Prepaid Rule 18 months, to April 1, 2019.

FIN also believes that, in further considering the Prepaid Rule, the Bureau should be guided by the February 3, 2017, Presidential Executive Order on Core Principles for

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<sup>1</sup> FIN is an alliance of technology leaders working to modernize the way consumers and businesses manage money and conduct commerce. We believe that technological transformation will make financial services more accessible, safe and affordable for everyone, and we promote policies that enable these innovations. Our member companies include Amazon, Apple, Google, Intuit and PayPal. For more information regarding FIN’s policy priorities and principles, please visit [www.financialinnovationnow.org](http://www.financialinnovationnow.org).

<sup>2</sup> 82 *Fed. Reg.* 13,782 (Mar. 15, 2017). See also 81 *Fed. Reg.* 83,934 (November 22, 2016) (the final Prepaid Rule).

<sup>3</sup> 82 *Fed. Reg.* at 13783.

Regulating the United States Financial System (“Executive Order”).<sup>4</sup> The Executive Order sets forth core principles, including “mak[ing] regulation efficient, effective, and appropriately tailored,” “foster[ing] economic growth and vibrant financial markets,” and “restor[ing] public accountability within Federal financial regulatory agencies and rationaliz[ing] the Federal financial regulatory framework,” which FIN believes are principles that should guide the Bureau’s review of the Prepaid Rule.

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FIN strongly supports the Bureau’s efforts to continue “to assess whether any additional adjustments to the [Prepaid] Rule are appropriate,”<sup>5</sup> with input from industry stakeholders. The market for prepaid products and the market for new electronic payment products, more generally, is complex, diverse and rapidly evolving. The Federal Reserve Board studied the emerging electronic payment market years ago and concluded that the market was “evolving rapidly and was not yet ripe for regulation.”<sup>6</sup> At that time the market was characterized as the market for stored value products, reflecting a belief at the time that the market was evolving in the direction of products where value would reside on the card itself instead of the card accessing bank balances as contemplated by the Prepaid Rule. We believe that the market for electronic payment products is evolving even more rapidly now than at the time of the Federal Reserve study and regulatory initiatives such as the Prepaid Rule should be narrowly crafted to avoid stifling continued innovation.

Recrafting the Prepaid Rule to avoid stifling innovation and to address the “unanticipated complexities” that have been identified by industry and the Bureau will take time, both for the Bureau to consider the issues and craft appropriate changes and for any such changes to be implemented. Accordingly, FIN urges the Bureau to extend for 18 months the effective date of the Prepaid Rule, to April 1, 2019.

With respect to digital wallets, the Bureau’s supplementary information issued with the Prepaid Rule specifically acknowledges this continuing market evolution.<sup>7</sup> Accordingly, we urge the Bureau to give further consideration to, including by seeking public comment on, the treatment of digital wallets. As one example, digital wallets should at minimum be exempt from the rigid pre-acquisition disclosure requirements. Some form of these disclosure requirements may be appropriate in the context of a physical general purpose reloadable (“GPR”) card, but these requirements are a fundamental mismatch in the digital

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<sup>4</sup> The Executive Order is available at <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states>.

<sup>5</sup> 82 *Fed. Reg.* at 13,782.

<sup>6</sup> 81 *Fed. Reg.* at 83,947. See also Bd. of Governors of the Fed. Reserve Sys., Report to Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products (Mar. 1997), available at [http://www.federalreserve.gov/boarddocs/rptcongress/efta\\_rpt.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/efta_rpt.pdf).

<sup>7</sup> 81 *Fed. Reg.* at 83,943 (stating that “[the Bureau] understands that payment processing by digital and mobile wallets is evolving quickly...”).

wallet context. The pre-acquisition disclosure requirements were developed primarily to enable consumers to comparison shop fees at the point of sale. In particular, the short-form pre-acquisition disclosure is a rigid form that highlights fees that are relevant only to the GPR card context (e.g., ATM withdrawal fees).

As an initial matter, digital wallets generally do not charge the specific fees required to be disclosed on the short-form pre-acquisition disclosure. Therefore, the short-form pre-acquisition disclosure does not facilitate comparison shopping, because the fees required to be disclosed for digital wallet will generally be “\$0” or “N/A,” and comparing multiple products with indistinguishable fee disclosures does not serve the purpose of facilitating comparison shopping, and risks consumer confusion.

Moreover, the form and format of the short-form disclosure is relevant for purposes of a physical card and physical packaging, but not for a digital wallet. The form does not translate into the digital wallet context, notwithstanding the fact that the Bureau has attempted to translate “font size” to “pixel size” and permit responsive design. The constraints on the “real estate” for digital wallet disclosures are different constraints than for physical card and card packaging. Fundamentally, the short-form design does not translate to the digital context. Moreover, there is meaningful, demand-driven innovation to enable digital wallets on platforms other than mobile phones, including voice-enabled devices and wearables. The rigid form and format requirements under the Prepaid Rule simply do not translate to these products that are experiencing substantial consumer demand. Instead these rigid form and format requirements, contrary to the Executive Order on Core Principles, inhibit “economic growth” and a “vibrant financial market.”

If the Bureau determines that, notwithstanding the fundamental differences between digital wallets and GPR cards, the pre-acquisition disclosure regime should apply to these two different product types, FIN urges the Bureau to exempt from the short-form pre-acquisition disclosure requirements those digital wallets or GPR cards that are free to consumers. For free products, repeatedly disclosing “\$0” or “N/A,” risks consumer confusion and imposes substantial cost without a commensurate consumer benefit, or any benefit at all. Creating this exception does not impair a consumer’s ability to comparison shop, and better aligns with the Executive Order’s principle of “efficient, effective, and appropriately tailored” regulation.

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FIN reiterates its support for the Bureau’s proposal to delay the effective date of the Prepaid Rule. Specifically, FIN urges the Bureau to extend the Prepaid Rule effective date for 18 months, to April 1, 2019, in order to ensure that the Bureau has sufficient opportunity to address open policy questions. At minimum, FIN urges the Bureau to recognize the difference between digital wallets and other prepaid cards, and specifically the incongruity of the pre-acquisition disclosure regime and the in-market reality of the characteristics of digital wallets and the manner of acquisition of such products. The Bureau’s failure to reconsider

these points will impair innovation and does not meet the Executive Order's aim to "foster economic growth and vibrant financial markets...."

FIN would be pleased to meet with the Bureau, at its convenience, or any other interested policymaker to discuss ways to tailor the Prepaid Rule, as it relates to digital wallets, to achieve "efficient, effective and appropriately tailored" regulation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Peters", with a stylized flourish at the end.

Brian Peters, Executive Director  
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c: Hon. Steven Mnuchin, Chairman, Financial Stability Oversight Council  
Members of the Financial Stability Oversight Council