

August 14, 2017

*Via Electronic Delivery*

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

Re: **Docket No. CFPB–2017–0015 and RIN 3170–AA72; Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)**

Dear Ms. Jackson:

The Clearing House Association L.L.C.<sup>1</sup> (“The Clearing House”) respectfully submits this comment letter to the Consumer Financial Protection Bureau (the “Bureau”) in response to the Bureau’s notice and request for comment on proposed modifications, published in the Federal Register on June 29, 2017, (the “Proposal”)<sup>2</sup> to its final rule published in the Federal Register on November 22, 2016, as amended on April 25, 2017, regarding prepaid accounts under Regulations E and Z (the “Prepaid Accounts Rule”). The Clearing House appreciates the Bureau’s industry outreach efforts and its attempts through the Proposal to relieve certain burdens on the industry and consumers that may result in diminished availability and utility of prepaid account products. The Clearing House encourages the Bureau to further revise the Proposal, as reflected in this comment letter.

## **I. Executive Summary**

### **A. Summary of the Proposal**

The Bureau proposed amending the Prepaid Accounts Rule to address issues raised by industry participants as part of the Bureau’s outreach programs and in comments received in connection with its proposal to delay the effective date of the Prepaid Accounts Rule. The Bureau’s Proposal includes the following provisions:

1. Loyalty, Award or Promotional Cards. The Proposal would clarify the scope of the exclusion from the definition of “prepaid account” for certain loyalty, award, or promotional gift cards.

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<sup>1</sup> The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. Its affiliate, The Clearing House Association L.L.C., is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

<sup>2</sup> Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 82 Fed. Reg. 29630 (June 29, 2017).

2. Limitations on Liability and Error Resolution for Unverified Accounts. The Proposal would exempt prepaid account providers from the error resolution and limitation of liability provisions with respect to unverified prepaid accounts. However, for accounts where the consumer's identity is later verified, prepaid account providers would be required to limit liability and resolve errors with regard to disputed transactions that occurred prior to registration and verification.
3. Exception to Hybrid Prepaid-Credit Card Provisions. The Proposal would amend the definition of “business partner” to exempt prepaid accounts that are linked to credit cards issued by unaffiliated third parties from the hybrid prepaid-credit card provisions of the Prepaid Accounts Rule if certain conditions are satisfied. The conditions are designed to ensure that consumers are not required to link their prepaid accounts and credit cards and that the terms of the prepaid accounts and credit cards do not vary based on whether a consumer agrees to link them.
4. Unsolicited Issuance Provisions. The Proposal would clarify the application of the Regulation E requirements regarding unsolicited issuance with respect to prepaid accounts used to disburse funds to consumers where consumers are not given an option to receive the disbursement other than via the prepaid account.
5. Pre-acquisition Disclosures. The Proposal would allow financial institutions that qualify for the retail location distribution exception under the Prepaid Accounts Rule to deliver the long form disclosure after acquisition without regard to the consumer notice and consent requirements of the Electronic Signatures in Global and National Commerce Act (the “E-Sign Act”) if (i) the disclosure is not provided inside the prepaid account packaging material and, (ii) the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer’s contact information. The Proposal also would create an exception from the foreign language disclosure requirements for payroll card accounts and government benefit accounts acquired by telephone principally in a foreign language “where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.”
6. Submission of Prepaid Account Agreements. The Proposal would allow prepaid account issuers to delay submitting changes in the names of relevant parties in a prepaid account agreement until such time as the issuer is submitting other agreement changes to the Bureau.
7. Effective Date. The Proposal solicits comments on extending the effective date of the Prepaid Accounts Rule.
8. Safe Harbor. The Proposal solicits comments on implementing a safe harbor for early compliance with the Prepaid Accounts Rule.

## B. Summary of The Clearing House's Comments

The Clearing House appreciates the Bureau's effort to clarify the Prepaid Accounts Rule and the opportunity to comment on the Proposal. As further explained in Part II below, The Clearing House respectfully submits the following comments:

1. *Loyalty, Award or Promotional Cards*. The Clearing House agrees with the proposed revisions to the term "prepaid account" to more clearly exclude loyalty, award and promotional cards and encourages the Bureau to adopt the revision as drafted. The Clearing House also urges the Bureau to more broadly clarify the definition of "prepaid account" to create better distinction between prepaid accounts and other accounts subject to Regulation E.
2. *Limitations on Liability and Error Resolution for Unverified Accounts*. The Clearing House agrees that a financial institution should not be required to comply with Regulation E limitations on liability and error resolution requirements if the financial institution has not completed its identity verification process, could not verify the consumer's identity, or does not have a consumer identification or verification process in place. However, we encourage the Bureau to revise the Proposal so that financial institutions are not required to provide error resolution and liability limitations for alleged errors that occur prior to a consumer providing registration information. This modification will encourage consumers to promptly register accounts, which will enable financial institutions to better safeguard consumer accounts from unauthorized transactions, and help to protect consumers, merchants and financial institutions.
3. *Exception to Hybrid Prepaid-Credit Card Provisions*. The Clearing House urges the Bureau to replace the proposed exemption from applicability of the hybrid prepaid-credit card provisions for certain third party business relationships (business partners), which unfairly differentiates among industry participants without benefit to consumers, with a broader exemption for all prepaid accounts linked with credit cards that meet the exemption criteria (not just prepaid accounts linked with credit cards issued by unaffiliated third parties), which will fully protect consumers while reducing consumer confusion over why apparently identical products are subject to different requirements and terms.
4. *Unsolicited Issuance Provisions*. The Clearing House agrees that offering prepaid accounts as the only means of receiving disbursements should not constitute a violation of the Regulation E unsolicited issuance restrictions. In addition, we encourage the Bureau to refrain from exercising its UDAAP authority due to consumers' "lack of choice" with respect to prepaid accounts without first obtaining more information about the types of programs where choice is not afforded and without additional guidance to the industry about the situations in which a lack of consumer choice could be construed as a UDAAP and why.
5. *Pre-acquisition Disclosures*. The Clearing House supports the Bureau's proposal to allow financial institutions that qualify for the retail location exception to provide the long-form disclosures electronically without regard to the consumer notice and consent requirements of the E-Sign Act. The Clearing House also supports the proposed

exception to the foreign language disclosure requirements for certain payroll card accounts and government benefit accounts acquired by telephone, and encourages the Bureau to further clarify that the foreign language disclosure requirement under § 1005.18(b)(9)(i)(C) is not triggered in other scenarios where a financial institution does not “affirmatively target” consumers in a foreign language.

6. Submission of Prepaid Account Agreements. The Clearing House agrees with and supports the proposal to allow prepaid account issuers to delay submitting changes in the names of relevant parties in a prepaid account agreement until such time as the issuer is submitting other agreement changes to the Bureau.
7. Effective Date. The Clearing House recommends that the Bureau extend the effective date of the Prepaid Accounts Rule requirements by an additional twelve (12) months to allow financial institutions sufficient time to conform their systems, products and services to the rule, as updated by the Proposal.
8. Safe Harbor. The Clearing House recommends that the Bureau offer a safe harbor for early compliance with the Prepaid Accounts Rule with respect to government benefit accounts, as early compliance with the Prepaid Accounts Rule may cause these accounts to no longer comply with existing applicable provisions of Regulation E.

## II. Discussion

### A. Loyalty, Award or Promotional Cards

1. The Clearing House supports the Proposal’s revisions to the term “prepaid account” to more clearly exclude loyalty, award and promotional cards and encourages the Bureau to adopt the revisions as drafted.

The Proposal would clarify that the term “prepaid account” excludes loyalty, award, or promotional gift cards that meet the criteria set forth in § 1005.20(a)(4) even if the requisite loyalty, award, or promotional disclosures are not provided. However, the Bureau specifically requested comment on an alternative where loyalty, award, or promotional gift cards that do not provide the disclosures enumerated by § 1005.20(a)(4)(iii) would still be covered by the Prepaid Accounts Rule, subject to an exclusion for cards manufactured, printed, or otherwise produced in the normal course of business prior to the Prepaid Accounts Rule’s effective date, or provided other accommodations to comply with § 1005.20(a)(4)(iii). The Clearing House generally supports this section of the Proposal as drafted and believes all loyalty, award and promotional prepaid products should be excluded from the definition of “prepaid account” under the Prepaid Accounts Rule, regardless of the method by which the product qualifies as a loyalty, award or promotional card. As such, The Clearing House does not believe the Bureau should move forward with the alternative proposed in the request for comments.

2. The Clearing House urges the Bureau to more broadly clarify the definition of “prepaid account” to create better distinction between prepaid accounts and other accounts subject to Regulation E.

The Clearing House notes that, as currently drafted, the Bureau’s proposed definition of “prepaid account” does not provide a clear demarcation between accounts that would be subject to the

requirements applicable to “prepaid accounts” and those that would be subject to Regulation E’s legacy “account” requirements, leaving financial institutions open to second-guessing about the classification and treatment of their products. While the Prepaid Accounts Rule offers some guidance through the “primary function” test that financial institutions can use in evaluating whether a product is a prepaid account, the outcome of this test is not necessarily definitive because the primary purpose of many traditional Regulation E “accounts” is transactional. Thus, financial institutions may be left to doubt whether the institution and the Bureau would agree on whether a product solely satisfies the general Regulation E definition of “account” under 12 C.F.R § 1005.2(b)(1), or also constitutes a “prepaid account” under 12 C.F.R. § 1005.2(b)(3) that is subject to the Prepaid Accounts Rule.

The Prepaid Accounts Rule also provides that a prepaid account is not a checking account, a share draft account or a negotiable order of withdrawal account. Financial institutions offering certain “checkless” checking accounts may not be able to determine whether these accounts are properly considered prepaid accounts under the Prepaid Accounts Rule or legacy Regulation E “accounts.” The Bureau provided guidance specific to “checkless” checking accounts in the June 2017 version of the “Prepaid Rule Small Entity Compliance Guide;” however, this guidance is of limited practical application because it refers to a product type by name rather than by definition, and does not alter the confusing overlap between the definitions of “prepaid account” and “account” in Regulation E itself. The Clearing House is doubtful that the Bureau intends that any product referred to by the product description “checkless checking account” may be characterized as an “account” rather than a “prepaid account” under Regulation E solely based on that description.

The Clearing House refers to its previously submitted comment letter regarding Docket No. CFPB–2014–0031 and RIN 3170–AA22 dated March 23, 2015 for proposed language and additional support as to why the definition of “prepaid account” should be more clearly distinguished from the definition of “account” under Regulation E.

## **B. Limitations on Liability and Error Resolution for Unverified Accounts**

The Proposal would provide that, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with Regulation E limitations on liability and error resolution requirements if the financial institution has not completed its identity verification process, could not verify the consumer’s identity, or does not have a consumer identification or verification process in place. In circumstances where a financial institution is later able to verify the consumer’s identity, the financial institution would be required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification and even prior to the consumer providing registration information to the financial institution.

1. *Financial institutions will be better able to limit fraud to consumer accounts if consumers provide registration or verification information early.*

The Clearing House agrees that a financial institution should not be required to comply with Regulation E limitations on liability and error resolution requirements if the financial institution has not completed its identity verification process, could not verify the consumer’s identity, or does not have a consumer identification or verification process in place. However, we encourage the Bureau to revise the application of the error resolution requirements to circumstances where a financial institution is later able to verify the consumer’s identity, as explained below.

We believe that consumers who have provided full registration information to their financial institutions in connection with prepaid accounts should receive error resolution and liability limitation rights, with the obligation for the financial institution to perform error investigations and limit liability beginning once identity verification has been completed. Accordingly, The Clearing House encourages the Bureau to revise the Proposal so that financial institutions are not required to provide error resolution and liability limitations for alleged errors that occurred prior to a consumer providing registration information to the financial institution. Requiring consumers to provide registration information to the financial institution before the institution is obligated to afford error resolution and liability limitation rights to the consumer will protect consumers, merchants and financial institutions. Further, such a requirement will help consumers understand the similarities between prepaid accounts and the checking accounts they may replace and help consumers distinguish their prepaid accounts from gift cards that offer more limited protections.

Financial institutions are best able to protect consumers against errors, particularly unauthorized transactions, once a consumer has registered their prepaid account. For example, financial institutions compare the locations where purchases are made with the consumer's address on file and, if a purchase is made in New York while the consumer lives in Florida, the financial institution can flag this transaction as suspicious or out-of-band and use the consumer's phone number on file to confirm whether fraud is occurring. Neither the enhanced transaction validation nor the consumer outreach to confirm the transaction is possible if the consumer has not provided registration information to the financial institution. As another example, certain fuel stations require customers to provide a zip code at the point of sale as part of a card transaction at the fuel pump. The zip code is passed to the card issuer for verification, and the payment is declined if the zip code provided at the pump does not match the zip code on file with the issuer. If there is no zip code on file, the issuer cannot employ this valuable fraud-prevention tool and may approve fraudulent transactions or decline valid transactions. Merchants often deploy costly fraud-prevention tools, such as billing address or zip code validation during the transaction authorization process, to assist card issuers in protecting consumers, merchants and issuers against fraud. These merchant efforts cannot be leveraged for unregistered cards, in which case issuers are left to either decline to accept unregistered cards for payment or assume the higher risk of fraud for themselves, merchants and consumers. Additionally, without the verification information consumers provide, fraudulent claims may take longer to detect and, as a result, may be larger than necessary because financial institutions were not able to notify consumers of the potential fraud.

Without consumer registration information, financial institutions lack data about an accountholder's identity that can be used to assess the validity of a transaction. Financial institutions trying to prevent fraud on unregistered prepaid accounts may limit account functionality prior to successful identity verification; or if functionality is permitted, be left in the unfortunate position of inconveniencing consumers by declining valid transactions that appear to be fraudulent, or unwittingly approving fraudulent transactions that may inconvenience consumers (due to the temporary loss of their funds) and result in losses by the financial institution or merchant. Encouraging consumers to register their prepaid products ultimately benefits consumers as it allows financial institutions to avoid having to limit account functionality or make decisions that may inconvenience consumers and that can be mitigated for registered prepaid accounts.

2. *The Clearing House does not believe the Bureau should revise the Proposal to include a third category of accounts for which consumers attempt but fail to complete the identification and verification process.*

The Bureau considered whether it might be appropriate to apply a different standard to prepaid accounts for which a consumer has attempted but failed to complete the consumer identification and verification process. The Bureau expressed concern that adding a third category of accounts would increase the complexity of the rule, and correctly noted that it may be difficult for financial institutions to distinguish between instances when a consumer has “failed to complete” the process, and when there has been a delay in providing information requested by the financial institution. Further, failure to complete the registration could be the result of a financial institution’s effective fraud prevention protocols. For example, a registration attempt may be flagged as requiring further review if the name and address on the account do not match public records or the records of the financial institution (as it may be the case that an unauthorized person is attempting to register the account). The Clearing House proposes the revised approach to account registration/verification and liability limits and error resolution discussed above and agrees with the Bureau’s concern that adding a third category creates unneeded and unwanted complexity.

### **C. Exception to Hybrid Prepaid-Credit Card Provisions**

The Prepaid Accounts Rule imposed new requirements on hybrid prepaid-credit cards, which allow a consumer to access a linked credit feature on a prepaid account in the course of a transaction if the credit feature is offered by the issuer, its affiliates or its business partners and meets specified conditions. The Proposal would amend the definition of “business partner” and, by extension the hybrid prepaid-credit card requirements, to exclude certain arrangements between prepaid account issuers, including digital wallet providers, and traditional credit card issuers, if the parties (i) are not affiliated, (ii) do not allow the prepaid card to access credit from the credit card account unless the consumer submitted a written request to link the two accounts, (iii) do not condition the acquisition or retention of either account based on whether the consumer authorizes the linkage, and (iv) do not vary terms and conditions based on whether the two accounts are linked. Each of the prepaid account issuer and credit card issuer must apply the same terms, conditions, features and fees as it would if the accounts were not linked for the exemption from the definition of “business partner” to apply under the Proposal.

1. *The Clearing House believes the Proposal unnecessarily and unfairly distinguishes between unaffiliated and affiliated providers of prepaid accounts and credit cards, contravening “level playing field” principles.*

Limiting the proposed exemption only to prepaid accounts linked with credit card accounts of “business partners” favors situations where the prepaid account issuer and the credit card issuer are unaffiliated third parties and unnecessarily and unfairly denies availability of the exemption when prepaid accounts and credit cards of related parties or the same entity that otherwise meet the conditions for the exemption are linked.

Under the Proposal, digital wallets, which often are provided by nonbank entities that do not also issue and are not affiliated with issuers of credit cards, would receive special treatment relative to other types of prepaid accounts, which are more often provided by financial institutions that also issue or are affiliated with issuers of credit cards. Certain digital wallets will be exempt from the linked credit

feature requirements in the Prepaid Accounts Rule while substantially identical prepaid products offered by financial institutions, meeting all other requirements for the exemption apart from the linked credit card being issued by an affiliate, will not be exempt if the credit card linked to the prepaid account happens to be issued by the same or an affiliated entity. This disparity is inappropriate and unjustified.

Consumers should receive the same protections from both types of prepaid accounts and their linked credit cards, regardless of any corporate affiliation between providers of the linked accounts. Further, the differentiation between products that appear identical to consumers is likely to cause unnecessary confusion for consumers who receive different sets of disclosures and are subject to different terms for what is, in their view, the same product. Consumers may not be able to recognize that the linked credit card is issued by an affiliate of the financial institution providing the prepaid account and, as such, subject to a different set of requirements than when the prepaid account is linked to a credit card issued by a financial institution that is not affiliated with the prepaid account provider.

One purpose underlying the creation of the Bureau was to “level the playing field” between banks and nonbank providers of consumer financial products and services in order to ensure fair competition and consistent protections for consumers.<sup>3</sup> Implementation of the Proposal, as written, would undermine the Bureau’s mandate to create such a level playing field.

The Clearing House believes that all prepaid accounts with linked credit cards should be treated equally under the Prepaid Accounts Rule. Affiliation between the issuer of a prepaid account and the issuer of a credit card subject to Regulation Z that is linked to the prepaid account should not affect the availability of the Bureau’s proposed exemption – either all prepaid account providers should be eligible for the exemption or none should be eligible.

Further, the Clearing House agrees with the Bureau’s observation that it may be difficult to distinguish digital wallet accounts from other types of prepaid accounts, including those that operate without physical access devices. Thus, rather than revising the definition of “business partner,” as the Proposal would do, The Clearing House recommends that the Bureau create a separate exemption from the definitions and coverage of the hybrid prepaid-credit card provisions in the Prepaid Accounts Rule for any linked prepaid accounts and credit cards that satisfy the exemption conditions included in the Proposal.

2. *The Clearing House believes that all negative balances on prepaid accounts, whether digital wallets or otherwise, should be subject to the same restrictions and allowances under the Prepaid Accounts Rule.*

The Bureau specifically requested comment on whether it should permit incidental credit to be provided via negative balance on a prepaid account, even when a covered separate credit feature is

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<sup>3</sup> “As mandated by Congress, [the Bureau] will particularly seek to level the playing field so that bank and non-bank providers of consumer financial products and services can compete freely and fairly – which always redounds to the benefit of consumers.” Richard Cordray, Prepared Remarks to the National Association of Attorneys General (NAAG) Spring Meeting (March 8, 2011), available at <http://www.consumerfinance.gov/newsroom/partnering-the-consumer-financial-protection-bureau-and-state-attorneys-general/>; see also Richard Cordray, “A Level Playing Field for Consumer Financial Products and Services” (Mar. 8, 2011), available at <http://www.consumerfinance.gov/blog/a-level-playing-field-for-consumer-financial-products-and-services/>.



connected to the prepaid account, as long as the other prerequisites set forth in § 1026.61(a)(4)(ii) are satisfied.

The Clearing House believes that qualification for the linked credit card exception should not affect the treatment of negative balances on prepaid accounts. The incidental credit allowances of the Prepaid Accounts Rule should apply equally to all prepaid accounts that are not hybrid prepaid-credit cards. The Clearing House discourages the Bureau from creating unnecessary distinctions among non-hybrid prepaid-credit cards, allowing some to qualify for incidental credit while prohibiting others from doing so, because this will not enhance consumer protections but will cause consumer confusion. As discussed above, products that appear similar to consumers should not be subject to different requirements for reasons unclear to such consumers.

3. *Prepaid account issuers should be responsible for ensuring that linked credit card issuers are afforded sufficient transaction information to remain compliant with the conditions for the linked credit card exception from the hybrid prepaid-credit card requirements.*

The Bureau solicits comment on whether prepaid account issuers or credit card issuers are likely to face any significant difficulties in structuring the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account, such as any significant difficulties for the card issuer in identifying which transactions on the prepaid account relate to incidental credit.

The Clearing House believes prepaid account providers should be responsible for ensuring that policies and procedures are in place to identify to issuers of linked credit cards the type of transaction for which credit is obtained under the line of credit through the prepaid account. For example, prepaid account providers may look to their payment networks to include transaction details in a pass-through credit card transaction that are sufficient to allow the credit card issuers to identify whether such a transaction is a P2P transaction (or other cash-access transaction) or whether such a transaction is to obtain goods or services.

#### **D. Unsolicited Issuance Provisions**

The Proposal would revise comment 18(a)-1 to clarify the application of the unsolicited issuance rules under § 1005.5(b)(2) of Regulation E. Specifically, the revised comment would state that if an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device.<sup>4</sup> The Bureau also noted that it will continue to monitor financial institutions' and other persons' practices relating to consumers' lack of choice, including with respect to prepaid accounts that are not subject to the

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<sup>4</sup> The Bureau explains that it "did not intend application of the unsolicited issuance requirements to mandate that consumers be offered other options to receive payments in circumstances beyond those already addressed by the compulsory use prohibition." 82 Fed. Reg. 29630, 29636.

compulsory use prohibition in 12 C.F.R. § 1005.10(e)(2)<sup>5</sup>, and will consider whether to exercise its authority over unfair, deceptive, or abusive acts or practices (“UDAAP”) under Title X of the Dodd-Frank Act.

The Clearing House supports the clarification of the unsolicited issuance rules in the Proposal, but encourages the Bureau to refrain from exercising its UDAAP authority due to a lack of choice with respect to prepaid accounts without first obtaining more information about the types of programs where choice is not afforded and without additional guidance to the industry about the situations in which a lack of consumer choice could be construed as a UDAAP and why. For many programs in which funds are distributed exclusively through prepaid cards, consumers previously could only receive the funds by paper check, and consumers without access to banking services would have to pay a fee to have such checks cashed. The exclusive use of paper checks was never considered a UDAAP when it was common in the marketplace. The Clearing House does not believe a lack of alternatives to receiving funds by prepaid cards should be considered a UDAAP either.

Further, financial institutions may not make the decision regarding how consumers receive their funds in many disbursement programs. Program providers may decide the means for disbursement of consumer funds and whether consumers will be offered alternatives. For example, a retailer may elect to provide refunds only through prepaid accounts and the issuer of the prepaid accounts may have no input into whether the retailer offers alternatives. We do not believe that financial institutions should be penalized for these decisions that are beyond their control.

#### **E. Pre-acquisition Disclosures**

1. *The Clearing House supports the proposed exception to the foreign language disclosure requirements for payroll card accounts and government benefit accounts acquired by telephone principally in a foreign language, and encourages the Bureau to further clarify the scope of § 1005.18(b)(9)(i)(C).*

Several provisions in the proposal would provide additional clarity and flexibility with respect to the Prepaid Accounts Rule's pre-acquisition disclosure requirements. This includes a proposed revision to the existing foreign language disclosure requirements. Under § 1005.18(b)(9)(i)(C), financial institutions must provide the required pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. This includes when a financial institution provides a means for the consumer to acquire a prepaid account “by telephone or electronically principally in a foreign language.” The Proposal would provide an exception to this requirement for payroll card accounts and government benefit accounts acquired by telephone principally in a foreign language “where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.”

The Clearing House supports this proposed exception and agrees with the Bureau’s stated view that “the foreign language requirements [should only] cover situations where the financial institution affirmatively targets consumers in a foreign language.” To this end, we encourage the Bureau to further

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<sup>5</sup> Under 12 C.F.R. § 1005.10(e)(2), “[n]o financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.”

clarify that the foreign language disclosure requirement under § 1005.18(b)(9)(i)(C) is not triggered where a financial institution does not formally offer interpretation services in connection with prepaid accounts that may be acquired by telephone, and informal foreign language assistance is provided by an employee during the acquisition process. Under such circumstances, the financial institution has not affirmatively targeted consumers in a foreign language.

We note that financial institutions, employers and government agencies employ many individuals, some of whom have native or near-native proficiency in a foreign language. Occasionally, employees use their language skills to provide translation and interpretation services for consumers or fellow employees. As such, the language interpretation for onboarding employees or enrolling consumers in payroll or benefit card programs is not always performed by a third party. Under the Proposal, employers allowing employees with language skills to assist foreign language speaking consumers who request assistance with their payroll cards would not be exempt from providing the pre-acquisition disclosures in a foreign language. As a result, these employers may ban their employees from offering assistance in favor of using third party language services to qualify for the exemption from the foreign language disclosure requirement. This would be a detriment to consumers who benefit from immediate foreign language assistance, creating unnecessary impediments to employers and their employees who may be able to provide that assistance.

2. *The Clearing House supports the proposal to permit long form disclosures to be provided electronically without regard to E-Sign Act requirements for certain prepaid accounts acquired at retail locations.*

The Proposal would also amend the Prepaid Accounts Rule's pre-acquisition disclosure requirements by revising § 1005.18(b)(1)(ii)(D) to state that, if a financial institution does not provide the long form disclosure inside the prepaid account packaging material and such financial institution is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, the financial institution may provide the long form disclosure in electronic form without regard to the consumer notice and consent requirements of the E-Sign Act. The Bureau specifically requested comment on the feasibility of providing the long form disclosure inside the retail packaging, by mail, or electronically.

The Clearing House supports the Proposal's allowance for electronic delivery of the long form disclosure without regard to the E-Sign Act consumer notice and consent requirements. The Clearing House believes that providing the long form disclosure inside retail packaging is not feasible in many cases, as space constraints on and around existing prepaid packaging mean that financial institutions may need to substantially increase the size of packages in order to accommodate the disclosure and retail stores may need to adjust their displays to accommodate larger packages. Further, consumers would still not have this information prior to purchasing the prepaid cards as they would have to purchase and open the packaging in order to see the terms and conditions provided in the disclosure.

#### **F. Submission of Prepaid Account Agreements**

The Proposal would allow prepaid account issuers to delay submitting changes in the names of relevant parties in a prepaid account agreement until such time as the issuer is submitting other agreement changes to the Bureau. As the Bureau noted in the Proposal, reporting frequent changes of relevant parties in an agreement that is otherwise unchanging could be time consuming. The Clearing

House supports this proposal and believes that it will reduce the burden of compliance on prepaid issuers.

### **G. Effective Date**

While the Proposal does not include a further extension of the effective date of the Prepaid Accounts Rule, the Bureau requested comments on whether such a delay is necessary and appropriate. With changes to the rule and disclosure requirements, financial institutions will require more time to conform their systems, products and services to the rule. For example, financial institutions need additional time to comply with the provisions that require responsive disclosures as additional time is needed to update website platforms to enable the responsive technology. Additionally, disclosures in development for certain prepaid products will need to be reviewed and rewritten to ensure they continue to comply with the Proposal and the Prepaid Accounts Rule. Thus, The Clearing House recommends the Bureau adopt a twelve (12) month delay to the effective date in order to allow financial institutions the time necessary to institute the systems, technological capabilities, and training necessary to support compliance with the Proposal.

### **H. Safe Harbor**

The Bureau requested comment regarding whether there are conflicts between the Prepaid Accounts Rule and current federal regulations governing prepaid accounts and government benefit accounts, and whether a safe harbor provision addressing early compliance with the Prepaid Accounts Rule would be necessary and appropriate. The Clearing House believes the Bureau should provide a safe harbor with respect to the requirements for government benefit accounts as these accounts are currently subject to Regulation E requirements and early compliance with the Prepaid Accounts Rule, which includes certain modifications to existing requirements, may cause these products to no longer be in compliance with the existing provisions of Regulation E.

The Prepaid Accounts Rule contains modifications to error resolution provisions, the annual error resolution notice and limitations on liability for government benefit accounts. Although these provisions specifically apply to government agencies, agencies typically partner with financial institutions to administer government benefit programs such that financial institutions must also comply with these provisions. For example, under new § 1005.15(e)(4)(i) of the Prepaid Accounts Rule, a government agency must comply with the error resolution requirements of § 1005.11 in response to a notice of an error received by the earlier of 60 days after (i) the date the consumer electronically accesses the prepaid account, if the error could be viewed in the electronic history, or (ii) the date the agency sent the first written history on which the error appeared. The Prepaid Accounts Rule also provides new alternative timeframe for compliance with the error resolution requirements. Specifically, under new § 1005.15(e)(4)(ii), an agency will be considered in compliance with its error resolution obligations if it investigates a notice of error received within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.<sup>6</sup> These provisions differ from the current rule,

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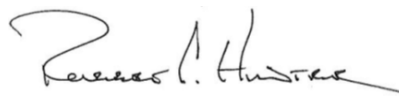
<sup>6</sup> Similarly, the Prepaid Accounts Rule provides an alternative means of compliance with the limitation on liability requirements in current §1005.15(d)(3), which provide that for purposes of the 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under current §1005.15(c). In contrast, under § 1005.15(e)(3)(ii) of the Prepaid Accounts Rule, an agency will be considered in compliance with

which states that the agency must hear from the consumer no later than 60 days after the consumer obtains a written account history or other account information made available to the consumer under current § 1005.15(c). Compliance with the new timeframe in the Prepaid Accounts Rule could result in a violation of the timeframe set out in the current rule. The Prepaid Accounts Rule also provides new means by which an agency may comply with the annual error resolution notice provided for in current §1005.15(d)(2).<sup>7</sup> We believe that financial institutions and government agencies that come into early compliance with the Prepaid Accounts Rule with respect to government benefit accounts should be afforded the certainty of a safe harbor.

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Thank you for your consideration and review of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact me using the contact information provided below.

Yours very truly,



Robert C. Hunter

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the requirements to limit consumer liability for an unauthorized transfer if it limits liability for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

<sup>7</sup> For example, under new § 1005.15(e) Agencies may include notices similar to an abbreviated notice contained in Appendix A-3 of the Prepaid Accounts Rule rather than providing a notice similar to the notice in current Appendix A-5.