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

RE: **DOCKET NO. CFPB-2014-0031**
PROPOSED RULE, REQUEST FOR COMMENT
PREPAID ACCOUNTS UNDER THE ELECTRONIC FUND TRANSFER ACT (REG. E)
AND THE TRUTH IN LENDING ACT (REG. Z)

Dear Ms. Jackson,

We appreciate the opportunity to provide comment to the Consumer Financial Protection Bureau ("CFPB" or the "Bureau") on its proposed rules relating to prepaid accounts under the Electronic Fund Transfer Act ("EFTA"), Regulation E, and the Truth in Lending Act ("TILA"), Regulation Z. We write in support of CFPB's effort to implement strong federal protections for consumers who use prepaid financial products.

Prepaid financial products are an innovative and rapidly growing payment market driven, in large measure, by necessity. These products meet an important commercial need for the significant population of under- or unbanked consumers with damaged or weak credit who do not have access to traditional banking or credit products in this country or who, by habit or custom, choose not to rely on banks. The wide array of prepaid financial products available on the market can offer these consumers an economical, safe and convenient way to receive, store, manage and transfer funds. For these individuals, such products can mean fewer fees (such as check cashing or overdraft fees), greater security (an alternative to carrying cash), and the ability to make purchases over the internet and by telephone. Essentially, prepaid products allow a greater number of consumers to participate more fully in all forms of commerce. It is imperative that strong consumer protections are introduced into this largely unregulated market.

We concur with the view of the National Consumer Law Center ("NCLC") that prepaid accounts, whether or not they are marketed as "bank accounts," should come with the same level of service and federal protections afforded to traditional banking customers and credit holders.¹

¹ See generally NCLC Comments to the FTC Mobile Payment Report.

We also concur that prepaid and credit products should remain separate accounts.² We applaud CFPB's proposed rules that provide a number of critical protections to consumers of prepaid products against undisclosed or hidden fees and charges, embedded credit features and abusive overdraft practices, loss or theft, incorrect charges, errors and fraud. We believe that these regulations will make prepaid products safer and more transparent, and increase consumer confidence in this payment system.

Because credit and overdraft features are currently being integrated into prepaid products and marketed to consumers, CFPB's proposed regulatory amendments addressing associated unfair lending and security practices are critical. The two key amendments are: (1) the required ability to repay analysis before an issuer or program manager may offer credit to a prepaid account holder; and (2) the prohibition against automatic withdrawals of funds loaded to the prepaid account for credit repayment. These amendments, in particular, fend against the abusive practices associated with credit and overdraft products that can cause great financial harm to consumers who can least afford to incur fees and other significant or prohibitive expenses.

These prepaid accounts are an untested, non-traditional payment system that was developed and promoted to serve financially vulnerable populations. While CFPB's proposed rules are a far leap in the right direction, additional protections are warranted to ensure these prepaid products provide a sound banking alternative for the under- and unbanked. For example:

- *Low and No Fees.* In addition to clear and advance disclosure of all fees as proposed by CFPB, we recommend that fees be capped or regulated such that the overall fee structure promotes the low-cost goals of these alternative products. No fees should be charged for account inactivity, balance inquiries, information and customer service inquiries, and for accounts with zero balance. We further recommend that mobile prepaid payment products be required to issue alerts when regular monthly fees are being withdrawn or when transactions incur additional fees.
- *Insurance.* While CFPB's proposed rules require prepaid issuers to disclose whether a prepaid account is eligible for Federal Deposit Insurance Corporation ("FDIC") deposit or National Credit Union Share Insurance Fund ("NCUSIF") share insurance, we believe prepaid deposits, no matter how small, deserve the full protection of deposit insurance in the event the issuer holding the funds becomes insolvent.³

² See generally NCLC, Issue Brief: *Keep Prepaid Cards and Credit Products Separate for a Win-Win for Consumers and Prepaid Cards* (July 2013), available at http://www.nclc.org/images/pdf/high_cost_small_loans/ib-prepaid-and-credit-dont-mix-july-2013.pdf (last accessed March 20, 2015).

³ Our view aligns with that of NCLC and the FDIC. See NCLC, Press Release: *American Payroll Association, National Consumer Law Center Agree Payroll Cards Make Sense for Unbanked If proper Guidelines Followed* (July 31, 2013), available at <http://www.nclc.org/images/pdf/pr-reports/pr-effective-payroll-card2013.pdf> (last accessed March 20, 2015); FDIC, *Model Safe Accounts Template*, available at <https://www.fdic.gov/consumers/template/template.pdf> (last accessed March 20,

Indeed, CFPB's own study of prepaid account agreements reveals that almost 80% of prepaid products on the market are already providing FDIC or NCUSIF insurance (or implying such protections apply).⁴ For this reason, requiring the prepaid product industry to structure their pooled accounts at depository institutions or credit unions so that each prepaid account is eligible to receive the benefit of FDIC or NCUSIF pass-through insurance would hardly be unexpected or onerous. Such a requirement would also aid in weeding out scammers and crooks that do not deposit consumer funds with legitimate financial institutions.

- *Customer Service Requirements.* As a general principal, a robust customer service infrastructure is necessary to implement the regulations CFPB has proposed regarding payment disputes, fraudulent transfers, loss or theft, or other issues arising from prepaid product transactions. Although such infrastructure likely exists for traditional banks and credit unions, there are several non-bank prepaid issuers in the marketplace that may not have dedicated or sufficient customer service resources for consumers. We suggest all prepaid account customers should receive a comparable level of customer service provided to customers of traditional bank or credit accounts, including a means to speak with a person and not just an automated voice response system. Accordingly, we encourage CFPB to mandate minimum customer service requirements for issuers and program managers, with no charge for such access.
- *General Safeguards.* Providers of prepaid accounts should also be required to establish policies and procedures related to: (1) succession, joint-accounts and beneficiaries; (2) minimum requirements related to data security and privacy, such as encryption and identification verification procedures to prevent against theft, hacking or loss in the event such prepaid products are offered via a mobile platform;⁵ and (3) fraud protection and detection features similar to credit cards. Issuers should also be required to have robust financial data back-up procedures, and to provide web-based access for mobile prepaid products in the event a device is broken, lost or stolen.

Finally, we note that CFPB's own study of prepaid account agreements revealed a concern that is ripe for CFPB to address at this time: "[T]here does not currently exist any comprehensive listing of all prepaid issuers, program managers, or programs."⁶ Prepaid products

2015). The template names the guiding principles that alternative transactional accounts designed for underserved consumers should have "transparent rates and fees that are reasonable and proportional to costs, access to banking services that feature FDIC insurance, and the protections afforded by applicable federal and state consumer protection laws."

⁴ See CFPB Study of Prepaid Account Agreements, at pp. 27-28 (November 2014).

⁵ On September 10, 2014, the Massachusetts Office of the Attorney General submitted a Comment Letter to CFPB pursuant to CFPB's RFI Regarding the Use of Mobile Financial Services By Consumers and Its Potential for Improving the Financial Lives of Economically Vulnerable Consumers, Docket No. CFPB-2-14-0012 (September 10, 2014), wherein the Office detailed its data security and privacy concerns associated with the use of mobile financial services.

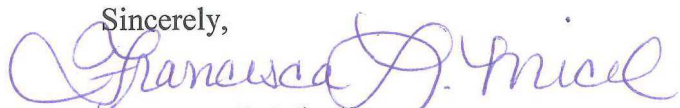
⁶ *Supra* note 4 at p.7.

are novel payment systems targeted to underserved and economically vulnerable populations – a prime market for scammers, money launders and embezzlers. We encourage CFPB to establish a mandated centralized registration requirement for all “prepaid account” issuers, managers or similar programs so the Bureau and states can monitor compliance with these and other applicable rules and regulations intended to protect consumers.

While it is our position that the traditional banking system must be accessible and affordable to all consumers, prepaid financial products have the potential to facilitate the process of enabling economically vulnerable consumers to participate in mainstream commercial transactions. With its proposed rules and the additional suggestions discussed here, CFPB can ensure that these financial products are transparent, secure, cost-effective, fair and do not present undue risk to consumers.

We offer our assistance and support as you continue to evaluate this important rulemaking. Please contact Francesca L. Miceli at 617.963.2565 should you have any questions or would like to discuss further.

Sincerely,



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