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August 14, 2017

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

Electronically submitted via <http://www.regulations.gov>

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

Dear Ms. Jackson:

PayPal, Inc. is pleased to offer comments in response to the Proposed Rule and Request for Public Comment on Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) that was published by the Consumer Financial Protection Bureau in the Federal Register on June 29, 2017.¹ In this letter, PayPal addresses the Bureau's request for public comment on potential modifications to the rule's credit-related provisions applicable to digital wallets capable of storing funds and to the effective date of the rule.

I. Introduction and Recommendation

PayPal is a global company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We strive to empower consumers and merchants to access, receive, and move their money anywhere in the world, anytime, on any platform and through any device. PayPal deeply respects the Bureau's mission to protect consumers by fostering their abilities to make informed financial decisions free from undue pressure and based on clear disclosures and a thorough understanding of product offerings. We subscribe to the same philosophy and aim to

¹ 82 Fed. Reg. 29630 (June 29, 2017).

ensure that our existing and potential customers are fully aware of the benefits and possible risks of the products and services we provide.

PayPal appreciates the Bureau's recognition that parts of the final rule can be improved to expand customer choice, lessen customer confusion, and reduce unnecessary and unintended burdens on providers of digital wallets capable of storing funds. Specifically, PayPal is pleased by the Bureau's acknowledgement that the definition of "business partner" in § 1026.61(a)(5)(iii) and related commentary should be tailored to recognize the nature of digital wallets and the benefits consumers enjoy and expect when linking credit cards to such wallets. We also appreciate the extension of the implementation date from October 1, 2017 to April 1, 2018 announced in April, and we thank the Bureau for the opportunity to comment on the latest proposed amendments to the rule.

We respectfully assert, however, that the new proposed amendments insufficiently reduce risks of customer harm and do not lessen significant implementation hardships arising from the blanket prohibition on negative balances in digital wallet accounts that are linked to a covered separate credit feature. Accordingly, we are requesting that the Bureau strike § 1026.61(a)(4)(i) from the final rule, thereby permitting negative balances in hybrid prepaid-credit card accounts as long as the prerequisites currently set forth in § 1026.61(a)(4)(ii) are met. Further, we believe that the newly proposed exception to the rule's restrictions on business agreements relating to credit cards linked to digital wallets is unduly narrow and could stifle innovation likely to benefit consumers. As a result, we are requesting modifications to the proposed amendments currently under consideration, particularly with respect to the provisions in § 1026.61(a)(5)(iii)(D)(4) and (5). Finally, we submit that absent modifications to the proposed amendments, additional time will be necessary to comply with the rule, and we request a further extension of the implementation deadline to October 1, 2018.

II. Adverse Consumer Consequences and Implementation Challenges Resulting from Negative Balance Restrictions

As currently structured, the rule and official commentary permit negative balances in the asset feature of a prepaid account only if the requirements of both § 1026.61(a)(4)(i) and (ii) are met. Specifically, § 1026.61(a)(4)(i) effectively bars negative balances in any prepaid account that can access credit from a covered separate credit feature, while § 1026.61(a)(4)(ii) disallows negative balances in prepaid accounts unless the prepaid account issuer has an established policy and practice of declining to authorize transactions for which it reasonably believes the consumer has

insufficient or unavailable funds and does not impose certain fees or charges relating to negative balances.

As a result of § 1026.61(a)(4)(i), PayPal accounts are not eligible under the current rule to hold a negative balance whenever a customer links a credit card issued by a bank that falls within the definition of a business partner as provided in the proposed amendment at § 1026.61(a)(5)(iii). Rather, negative balances that would otherwise be permitted under § 1026.61(a)(4)(ii) – for example, negative balances created by a delayed load cushion or a reversal of a provisional credit – are disallowed in such cases. Instead of allowing these negative balances to be held in the normal course, the rule as promulgated requires PayPal either to create a separate credit account or credit subaccount where the negative balance will be applied or to apply the negative balance to an existing covered separate credit feature linked to the customer's PayPal account.

As PayPal previously explained in our comment letter of April 5, 2017, consumers are likely to become confused if PayPal opens separate credit accounts or subaccounts in their PayPal wallets to avoid negative balances in the asset feature of their PayPal account when a credit card issued by a business partner is linked. Such confusion will likely arise from the receipt of certain Regulation Z disclosures and Card Act monthly statements that would be mandated under the rule for separate credit accounts or subaccounts. Customers who previously incurred a negative balance in their PayPal account without any consequences when their wallet was linked only to credit cards issued by companies that were not PayPal business partners are unlikely to understand the procedures that would be imposed if and when they incur a negative balance in their PayPal account after linking a credit card issued by a business partner. Such confusion is likely to be heightened in cases where consumers acquire and link a credit card before any arrangement arises between PayPal and the card issuer or before the consumers become aware of a business arrangement between PayPal and the card issuer.

Building systems to hold otherwise permissible negative balances in separate subaccounts when business partner credit cards are linked (and converting back if consumers subsequently remove such credit cards from their PayPal accounts) would be a major technological and financial undertaking for PayPal and other digital wallet providers. In addition, providing credit subaccounts would give rise to a host of questions regarding applicable credit terms, procedures, and disclosures. Merely attempting to describe to consumers in a meaningful way the conversions of negative balances into credit subaccounts would be quite challenging.

While the rule as currently drafted permits PayPal to avoid the need to create separate subaccounts by charging a covered separate credit feature and thereby preventing an asset account balance from going below zero, such charges will not always be possible. For example, PayPal will not be able to apply the negative balance to a linked credit card when doing so would cause the card to exceed the credit limit set by the card issuer. Even when it is possible to charge the card, however, doing so likely would be financially detrimental to consumers. In particular, applying the negative balance to a linked credit card would likely be deemed a cash advance by the card issuer and subject the customer to interest and fees. Such a result would hardly be considered consumer-friendly, especially in light of the fact that PayPal would not have imposed interest or fees had the rule permitted the maintenance of a negative balance in the PayPal account.

The Bureau's most recent proposal to amend the rule acknowledges PayPal's earlier request to permit incidental credit to be provided via a negative balance in a prepaid account when a covered separate credit feature is connected to the account as long as the prerequisites contained in § 1026.61(a)(4)(ii) are satisfied.² Nonetheless, the Bureau is not proposing to include our requested amendment to the rule, citing the fact that other proposed amendments narrow the circumstances in which digital wallets would be considered hybrid prepaid-credit cards subject to the prohibition on negative balances set forth in § 1026.61(a)(4)(i) and based on a belief that when a digital wallet constitutes a hybrid prepaid-credit card, the prepaid account and credit card issuers can structure the terms of the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account.

PayPal disagrees with the Bureau's hypothesis that digital wallet providers and unaffiliated credit card issuers that fall within the Bureau's newly proposed definition of "business partner" can or will structure account terms to avoid or waive fees when incidental credit that would otherwise take the form of a negative balance in a digital wallet is instead converted to an extension of credit through a linked credit card. The Bureau cites no evidence that credit card issuers would willingly extend credit and waive interest and fees on the equivalent of cash advances to bring negative asset balances in digital wallets to zero, and we think it is overly optimistic to assume that credit card issuers would provide more charitable treatment regarding interest and fees for extensions of credit used to top off digital wallet balances than for extensions of credit used for other purposes. We believe it is much more likely that credit card issuers will impose interest and fees directly on their consumers for credit drawn to

² 82 Fed. Reg. at 29650.

avoid negative balances or will expect digital wallet providers to incur those costs on behalf of their customers.

In light of the existence of the protections in § 1026.61(a)(4)(ii) that impose limits on insufficiently funded transactions and prohibit certain interest and fees, we do not see or understand a need for a further prohibition based on whether there is a business arrangement between the prepaid card issuer and the linked credit card issuer, particularly given the adverse consumer consequences described above. In fact, several of the rationales provided by the Bureau for its absolute ban on negative balances in digital wallets linked to credit cards issued by business partners are wholly unrelated to the nature of the relationships between the issuers of prepaid accounts and the issuers of linked credit cards.

Setting forth one of the original rationales for the ban on negative balances for hybrid prepaid-credit cards, the Bureau emphasized a desire to “make it substantially easier for creditors and consumers alike to implement and understand credit accessible via a hybrid prepaid-credit card under a credit card regime.”³ The Bureau went on to say that “because hybrid prepaid-cards by their nature involve consumer assets as well as use of credit, bifurcating the asset feature from the credit feature makes application of the credit card rules more intuitive in a number of respects.”⁴ As an example, the Bureau mentioned that barring negative balances in asset accounts can help clarify the finance charges for the credit product. The Bureau also explained that bifurcating the asset feature from the credit feature “will make it easier to apply standard credit card requirements, such as periodic statements requirements.”⁵ None of these rationales turn on the existence of a business arrangement giving rise to a hybrid prepaid-card account, however, and such a relationship is irrelevant to a customer’s ability to understand the terms and consequences of an otherwise permissible negative asset balance in a digital wallet. Simply put, there is no material difference between the operation of a linked credit card issued by a PayPal business partner and the operation of a linked credit card in the same wallet issued by a non-business partner.

Given the high likelihood of adverse consequences arising from an absolute prohibition against negative balances in digital wallets linked to covered separate features and the significant protections already afforded to consumers in § 1026.61(a)(4)(ii), we respectfully request that the Bureau permit the use of negative

³ 81 Fed. Reg. 83934, 84264 (Nov. 22, 2016).

⁴ *Id.*

⁵ 81 Fed. Reg. at 84265.

balances in hybrid prepaid-credit card accounts by striking § 1026.61(a)(4)(i) from the rule.

III. *Risks to Digital Wallet Innovation Arising from Deterrence of Certain Products and Business Relationships*

In response to the initial prepaid rule published in the Federal Register in December 2014, PayPal submitted comments to the Bureau advocating that digital wallets should not fall within the definition of a “prepaid account.” Among other concerns, PayPal asserted that digital wallets capable of storing funds do not pose the risks of consumer harm the Bureau sought to target, particularly with respect to overdraft features and fee structures. We further explained that the application of restrictions primarily designed to address general purpose reloadable cards could stifle innovation in the digital and mobile payments space and impair the development of new, valuable products to engage consumers in our increasingly digital society.

While we appreciate the Bureau’s attempt to address PayPal’s concerns by creating certain exemptions to restrictions on offers or usage of credit cards linked to digital wallets, we respectfully assert that the Bureau’s latest proposed amendments are likely to chill innovation. Of particular concern are the prerequisites contained in proposed § 1026.61(a)(5)(iii)(D)(4) and (5) that prepaid account issuers and credit card issuers must apply the same terms, conditions, or features (or specified terms and conditions) of their products regardless of linked status to qualify for the exemption to the “arrangement” definition set forth in proposed § 1026.61(a)(5)(iii)(A) and thereby to avoid the 30-day waiting period and the negative balance restriction otherwise applicable to “business partners.” Requiring identical treatment for linked and non-linked products will limit digital wallet providers and credit card issuers’ abilities to offer consumer benefits that could take advantage of the synergies created by linked offerings.

It is difficult to predict exactly what future innovations might be inhibited and how synergies might be restricted as a result of the terms of § 1026.61(a)(5)(iii)(D)(4) and (5). One likely immediate effect, however, could arise from the mandate in proposed § 1026.61(a)(5)(iii)(D)(5) requiring credit card issuers to provide the same “specified terms and conditions,” including those relating to limitations on liability for unauthorized transactions, regardless of whether the card is linked to a digital wallet.⁶ Linkage of credit cards to a digital wallet containing a prepaid feature may enable access to more effective security and transaction monitoring features offered by the

⁶ See 82 Fed. Reg. 29630, 29654.

digital wallet provider. Given such heightened security, it is conceivable that a credit card issuer might be willing to extend greater protections to the cardholder based on linkage of their credit card to a digital wallet. The rule should not impose a roadblock to that kind of consumer-friendly innovation.

As another example, § 1026.61(a)(5)(iii)(D)(5) would not permit a credit card issuer to accept a payment originating from a cardholder's linked PayPal account if it does not permit a cardholder to make payments from a PayPal account when the credit card is not linked. Because designing and implementing systems to allow a credit card issuer to receive payments via PayPal can be costly and time-intensive, credit card issuers might be willing to accept payment via PayPal only from those customers who link their credit card to their PayPal account. Faced with the requirement that either all cardholders be given an opportunity to pay their credit card bill via PayPal or that no cardholders be offered that opportunity, the card issuer might decide not to provide the payment option to any customer. Such a decision would be detrimental to cardholders who want to link their cards to their PayPal account and pay their credit card bill using PayPal, but it would not provide any offsetting benefit to cardholders who do not want to link their cards to a PayPal account.

Ultimately, while the Bureau's proposed prerequisites for an exemption to the definition of "business partner" might make sense to address risks related to fees and overdraft features of traditional general purpose reloadable cards, PayPal respectfully asserts that the exemption is unduly narrow and fails to take into account all of the existing and potential benefits arising from the linkage of credit cards to digital wallets. We therefore request that the Bureau strike the prerequisites for an exemption to the definition of business partner set forth in § 1026.61(a)(5)(iii)(D)(4) and (5), at least with respect to digital wallets.

IV. Request for Extension of the Implementation Deadline

In the event the Bureau is not persuaded by the above arguments, PayPal respectfully requests an extension of the rule's April 1, 2018 effective date to permit PayPal and similarly situated prepaid account issuers additional time to design and implement product changes required to comply with the negative balance ban on hybrid prepaid-credit accounts.

As previously mentioned, constructing systems to convert permissible negative balances to separate credit subaccounts when a business partner's credit card is linked to a PayPal account (and converting back if the credit card is delinked from their PayPal account) would be a major undertaking. Such credit subaccounts would be

subject to virtually all of the various requirements and restrictions in Regulation Z for credit cards, including among other things: (i) providing credit card account opening disclosures; (ii) performing an ability-to-pay underwriting analysis prior to approving an account; (iii) providing monthly periodic statements at least twenty-one days before the payment due date; (iv) restricting PayPal's ability to use funds in a wallet balance to repay any negative balance owed to no more than once per month (subject to customer written consent); and (v) complying with § 1026.13 billing error resolution procedures.

Designing and implementing a system to automatically top off negative account balances through the charging of a linked covered separate credit feature would also be time consuming and would require resolution of complicated policy issues, including how to decide which credit feature to charge when multiple covered separate credit features are attached to the same prepaid account. In addition, implementing a system to avoid negative balances in asset accounts through the charging of linked credit cards would likely require collaboration and negotiation with business partners that issue credit cards linkable to PayPal's digital wallet.

PayPal has assessed the level of effort required to create separate subaccounts or to implement procedures to top off negative account balances through the charging of linked covered separate credit features. Based on the rule as it currently exists, PayPal would be unable to develop either option by April 1, 2018, even if such work were the only technology development priority of the company. According to our assessment, it would take a minimum of twelve months for PayPal to implement processes for creating compliant separate credit subaccounts for negative balances or for charging negative balances to a linked covered separate credit feature. As a result, PayPal respectfully requests an extension of the Rule's effective date to October 1, 2018 to implement the operational and technological changes necessary to comply with the negative balance ban for hybrid prepaid-credit accounts.

V. Conclusion

To avoid adverse consequences to consumers and reduce implementation burdens, PayPal urges the Bureau to strike § 1026.61(a)(4)(i) from the rule, eliminating the prohibition against creating negative balances on the asset feature of a hybrid prepaid-credit card for those negative balances that meet the requirements set forth in § 1026.61(a)(4)(ii). PayPal also requests modifications to the proposed amendments in § 1026.61(a)(5)(iii)(D)(4) and (5) to allow terms, conditions, or features of credit products to vary depending on whether they are linked to a digital wallet. Should the Bureau decline to make the substantive changes we propose,

PayPal requests an extension of the implementation deadline by at least six more months, until October 1, 2018, to make necessary changes to implement the ban against negative balances for hybrid prepaid-credit cards.

We appreciate the Bureau's consideration of these proposed amendments. If you have any questions or would like to discuss any of the topics addressed in this letter, please do not hesitate to contact me.

Sincerely,

/s/ Jeffrey Levine

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