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A TSYS® Company

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Via FederalRegisterComments@cfpb.gov

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

RE: Docket No. CFPB–2017–0015

Dear Ms. Jackson:

NetSpend Corporation ("NetSpend"), a TSYS company, is pleased to provide these comments in response to the Consumer Financial Protection Bureau's ("CFPB") Notice of Proposed Rulemaking published in the *Federal Register* on June 29, 2017 (the "Proposal").[1] The Proposal seeks comment on several modifications to the rule governing Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) published in the *Federal Register* on November 22, 2016 (the "Rule").[2] In light of these modifications, the Proposal also seeks comment on whether the effective date of the Rule should be extended beyond April 1, 2018.[3]

NetSpend is a leading provider of prepaid card products and serves a wide variety of consumers, including unbanked and underbanked consumers in the U.S. who may not have (or want) a traditional bank account and who often rely on alternative financial services. NetSpend is committed to providing consumers with innovative and affordable financial products that meet their financial needs. NetSpend is the program manager for bank-issued prepaid cards marketed to consumers primarily through the Internet, direct marketing and retailers, as well as through employers. NetSpend's prepaid card products are offered with different fee plans and options designed to provide consumers with choices, while delivering the most value at the lowest price to the cardholder. As of June 30, 2017, NetSpend had approximately five million active cards.

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[1] 82 Fed. Reg. 29,630 (June 29, 2017).

[2] 81 Fed. Reg. 83,934 (Nov. 22, 2016).

[3] The current effective date of the Rule was established following an earlier CFPB rulemaking, which extended the effective date of the Rule from Oct. 1, 2017 to April 1, 2018. 82 Fed. Reg. 18,975 (Apr. 25, 2017).

The Proposal contains several positive changes to the Rule that would benefit consumers and the prepaid industry. However, these changes do not address some of the more serious deficiencies in the Rule. The most fundamental departure in the Rule from regulatory precedent is the Rule's treatment of overdraft protection as a credit extension. The CFPB's continued unwillingness to reconsider or modify its approach to regulating overdrafts as extensions of credit in this context remains very concerning.

As explained more fully below, the changes that the CFPB is willing to consider in the Proposal, although generally welcome, would necessitate a significant extension of the Rule's effective date to give all participants involved in the prepaid marketplace sufficient time to implement the operational requirements necessary to comply with the Rule. Although the Proposal, if finalized, would not significantly impact the substantive requirements for NetSpend's prepaid programs, it <u>would</u> fundamentally impact the compliance implementation process by further delaying the regulatory certainty needed before NetSpend can begin taking concrete implementation actions. NetSpend has long been engaged in planning for many of the changes contemplated in the Rule, but it needs regulatory certainty before it can actually put those plans into action.

Because the CFPB will likely not finalize the Proposal for several months, if the CFPB does not significantly extend the Rule's effective date, then NetSpend would have a very limited period after publication of the final version of the Proposal to complete all the operational requirements necessary. Even a 12-month extension of the Rule's effective date would still pose significant challenges. If the industry does not have sufficient time to manage these challenges, it could potentially result in consumer confusion and other harms. NetSpend, therefore, supports a further extension of the Rule's effective date to April 1, 2019.

<u>Delaying the Effective Date</u>

Extending the effective date of the Rule to April 1, 2019 would provide NetSpend and the other participants in its prepaid programs, as well as the prepaid market generally, with the time needed for each participant to implement its respective obligations to comply with the Rule. The Proposal would make substantive changes to the Rule that would require further changes to NetSpend's short-form disclosure forms and account-opening disclosure forms. Most importantly, the continuing uncertainty about the requirements of the Rule means that NetSpend cannot begin taking concrete implementation steps. NetSpend cannot, for example, finalize disclosure templates with issuing banks or layouts with print vendors until there is regulatory certainty. This continuing delay, and the overall extensive implementation time period that will already be required, supports a significant extension of the Rule's effective date by the CFPB.

NetSpend explained the many operational challenges in making the changes required by the Rule in its comment letter of April 5, 2017, responding to the CFPB's proposed delay of the Rule's effective date to April 1, 2018 (the "April 5th Comment Letter").[4] All of the challenges raised in the April 5th Comment Letter, some of which are reiterated here, continue to apply. The CFPB should not underestimate the operational complexity of making the types of changes required to comply with the Rule. What might seem like a reasonable period of time to bring a prepaid program into compliance for an issuer or program manager with a limited number of relatively uniform programs is simply an insufficient period of time for issuing banks and program managers, like NetSpend, that manage a wide variety of programs, each with a range of customized characteristics.

A. *Given the Operational Complexity of Implementing the Required Changes, NetSpend Needs a Significant Extension of the Effective Date.*

In general, there are four participants in NetSpend's prepaid programs: the issuing bank, the program manager (i.e., NetSpend), card plastic and packaging vendors, and retail distributors and other partners. Each participant has key obligations for successful implementation of the program, including compliance obligations. These obligations, in general, cannot be implemented concurrently. That is, each participant must complete one action before the next participant can complete another action. For example, the long-form and short-form disclosures must first be prepared by NetSpend. NetSpend must then obtain feedback or approval for these disclosures from an issuing bank. Once NetSpend works with the issuing bank to obtain its approval, NetSpend must ensure that the vendor that will print card packages and disclosures can prepare the disclosures as designed and approved. As described more fully in the April 5th Comment Letter, the card packaging design process is not a simple matter. Packages must be fundamentally redesigned to accommodate new disclosure requirements. NetSpend's issuing banks and vendors also have relationships with other prepaid programs and, thus, will require additional time to review, approve, and produce compliant card packaging and other materials, because they will be responding to requests and orders from multiple clients simultaneously.

Once packaging redesigns have been approved, the business and compliance requirements have been met, and the vendor has prepared card packaging, then NetSpend's retail distributors and partners must stock store locations with compliant materials. Although NetSpend appreciates the CFPB's willingness to permit program managers to "sell through" existing inventory, the compliance risk posed by such a course of action is broader than the protection that the CFPB can provide with such a safe harbor. Prepaid program participants

[4] *See* Comment Letter ID CFPB-2017-0008-0025 in response to proposed delay of the Rule's effective date, 82 Fed. Reg. 13,782 (Mar. 15, 2017).

could face the risk of actions from other regulators or private litigants related to changes required under the Rule.[5]

All of this operational complexity, while a challenge in itself, is daunting when multiplied by the number of issuing banks, vendors, and retail partners in NetSpend's various prepaid programs. NetSpend does not just have one company filling each of these roles. Rather, NetSpend has relationships with six issuing banks, seven print vendors, and hundreds of retail companies and distributors. These retail distributors and partners provide prepaid cards at over 110,000 locations, including employers. The cumulative effect of multiple issuers and retail partners, each combination of which may participate in multiple prepaid programs, results in changes to hundreds of disclosures, cardholder agreements and marketing pieces, in addition to system and platform changes. The hundreds of pieces of revised materials specific to NetSpend must be pushed through a vendor production pipeline at the same time as thousands of other materials are being pushed through the same pipeline by other prepaid program managers.

To be sure, NetSpend can take a number of actions to facilitate efficient implementation of operational changes. For example, NetSpend can use standard disclosure templates and some implementation tasks can be advanced in parallel. In addition, NetSpend will leverage the work already completed following previous iterations of the CFPB's proposals on prepaid accounts. Indeed, NetSpend has been engaged in planning for many of the changes contemplated in the Rule since the CFPB's initial proposal on prepaid accounts was released in November 2014.

However, thorough planning efforts can only mitigate some of the operational challenges and risks. The CFPB should give prepaid program managers like NetSpend the best chance possible to succeed, and the best tool that the CFPB can give to prepaid program managers is implementation time. Sufficient time will enable prepaid program managers to implement the changes required by the Rule in a very deliberative and careful manner. Setting an effective date that does not permit careful implementation would result in a rushed process, disadvantaging both industry and consumers, which would ultimately result in a frustration of the CFPB's purpose in issuing the Rule. A meaningful delay in the Rule's effective date would enable NetSpend, its issuing banks, its vendors, and its retail partners to implement the required changes while still providing a time buffer for addressing unforeseen challenges that develop during implementation.

[5] Although the focus of this discussion is on disclosures and card packaging, the same issues apply with related fee disclosures in marketing collateral that needs to be harmonized with the Rule's requirements. In all cases, a similar process of modification, production and distribution needs to be completed.

B. *A Deliberative Implementation Plan That Minimizes Consumer Confusion Merits an Extension of the Rule's Effective Date to April 1, 2019.*

The Proposal does not suggest a date by which the CFPB might consider extending the Rule's effective date. NetSpend believes that a one-year extension to April 1, 2019 is necessary.[6] An extension for a shorter period, such as a six-month extension to October 1, 2018, would not provide sufficient time for prepaid programs to both implement all the necessary operational changes and resolve unanticipated issues that invariably result in such complex undertakings.

As noted above, successful implementation requires bringing multiple participants together in a coordinated effort. It is likely that issuers will receive unprecedented demands on their resources to review and approve disclosures and marketing collateral.[7] Similarly, the vendors in the industry that support plastics and packaging will likely receive unprecedented demands on their resources. Because this implementation initiative will be a one-time event, these vendors are unlikely to add significant resources that would permit business-as-usual turnaround times on work requests. Furthermore, retail distributors and store locations will want to ensure that updated card packaging and displays do not significantly disrupt existing store operations, particularly during peak business periods.

To enable the CFPB to better understand the specific nature of these challenges and risks and how they might impact the implementation timeline, NetSpend has outlined below its estimate of the time that will be required to ensure that the changes required by the Rule can be implemented in a deliberative manner while providing for a buffer to address issues as they arise. This outline is based on NetSpend's past experience in implementing major changes to its prepaid programs, together with its estimation of the additional time needed given the unprecedented, industry-wide demands on each of the prepaid program participants. The "Key Risks" listed below describe the key risks that could jeopardize the timing for complying with the Rule, but they are not the only implementation risks.

Assuming the Proposal is finalized in mid-September:

- *September 2017 to November 2017:* NetSpend finalizes revised disclosures and other materials and submits these materials to issuing banks on a rolling basis.

[6] The April 1, 2019 date is based on the assumption that the CFPB will finalize the Proposal within a few months. A significant delay in finalizing the Proposal would necessitate a further extension of the effective date to allow NetSpend to implement the complex processes described herein.

[7] In addition to changes in disclosures necessary to comply with the Rule, NetSpend and many other financial services providers will likely need to make disclosure changes to comply with the CFPB's Arbitration Rule. These changes to comply with the Arbitration Rule add incremental complexity and time to the process of drafting disclosures and receiving approval from issuing banks.

  - Key Risk: The CFPB's final amendments to the Rule significantly depart from the Proposal.

- *October 2017 to February 2018*: Issuing banks review and approve revised disclosures and other materials. NetSpend prepares the creative layout following bank approval.
  - Key Risk: Multiple rounds of revisions to disclosures and collateral are required.

- *January 2017 to March 2018*: Printing and packaging vendors prepare layouts and designs for plastics and packaging.
  - Key Risk: Multiple rounds of revisions to layouts are required when vendors' services are already in high demand.

- *February 2018 to August 2018*: Printing and packaging vendors produce plastics and packaging for distribution; NetSpend distributes packages to retail partners on a rolling basis.
  - Key Risk: Vendors cannot meet work order deadlines given the high demand for their services.

- *June 2018 to April 2019*: Packaging and other materials are distributed to NetSpend's distribution and retail partners; retail locations stock compliant materials.
  - Key Risk: Distribution and retail partners are unable to distribute and stock compliant materials in the scheduled timeframe due to competing resource demands.

The timeline above assumes timely finalization of the Proposal, minimal revisions to disclosures and other materials, and efficient production of such materials by vendors. Realistically, it is likely that there will be delays at various points in the process, which will extend the timing outlined above. The 2018 holiday season will cause delays in finalizing reviews and working with print vendors, and will preclude NetSpend from stocking compliant products from approximately the end of November 2018 until February 2019. Accordingly, once materials have been reviewed and approved and the layouts designed, NetSpend estimates that the full production-to-distribution cycle will take place over nine months on a rolling basis. Therefore, based on this implementation timeline, NetSpend believes that an extension of the effective date of the Rule until April 1, 2019 is well supported and would give the industry the best chance to succeed.

Error Resolution and Limitation on Liability

NetSpend supports the amendment in the Proposal that would limit a prepaid provider's obligation to provide error resolution rights under Regulation E to a cardholder until he or she completes the registration process, including verification of the cardholder's identity. However, Netspend is concerned that extending the time period in which prepaid issuers must provisionally credit an account to transactions that occurred before registration is completed increases the scope for potential fraudulent activity. Although NetSpend appreciates that it would not be required to investigate asserted errors or provisionally credit accounts until after a cardholder successfully completes registration, fraudsters nevertheless have more of an incentive to attempt to evade fraud screening and identity verification controls under the Proposal. In particular, fraudsters who use stolen identities to complete the registration process could collect provisional credits based on fraudulent error assertions before their true identity is determined over a longer period of time. Allowing cardholders to receive provisional credits for a time period when a prepaid provider is unable to fully leverage its fraud screening and identity verification controls presents an unfair and unacceptable risk on prepaid providers where fraudulent actors are involved. Therefore, the Proposal could actually result in prepaid providers placing additional restrictions on card usage prior to registration in an effort to mitigate the scope of the prepaid provider's fraud exposure.

The Proposal also solicits comment on whether the CFPB should require prepaid providers to extend error resolution rights even to cardholders who "fail to complete" registration. NetSpend agrees with the CFPB's implicit recognition in the Proposal's commentary that providing error resolution rights to a cardholder who "failed to complete" the registration process would add an unworkable degree of complexity. In addition to the difficulty of determining when a cardholder has "failed to complete" registration, accounts in such a category are particularly susceptible to fraudulent activity. Typically, cardholders in this category have failed to complete registration because they have not provided verifiable proof of identity or have abandoned the registration process. This is often the type of cardholder who would attempt to illegitimately profit from a provisional credit as part of the error resolution process.

Treatment of Overdraft Services

In the Proposal and the CFPB's March 15, 2017 proposal on extending the effective date of the Rule to April 1, 2018, the CFPB declined to solicit comments on issues in the Rule other than those expressly described in the proposals. This failure to consider comments about more serious deficiencies in the Rule is misguided.

In particular, not incorporating the feedback from industry on the Rule's treatment of prepaid overdraft services as a credit extension undermines the meaningfulness of the CFPB's stated "extensive efforts" to conduct industry outreach following finalization of the Rule. The CFPB has not provided a compelling explanation for why it believes that consumers who hold prepaid cards should be treated differently than consumers who hold debit cards. The CFPB's disparate approach in regulating prepaid card overdraft, as opposed to debit card overdraft, was further emphasized by the CFPB's August 4th release of model overdraft disclosure forms applicable to checking accounts. With prepaid overdraft, the CFPB skipped past any discussion of disclosures and went straight to substantive regulation of prepaid overdraft as a credit extension.

NetSpend would be happy to engage with the CFPB on how to better facilitate informed consumer choices. NetSpend presents a clear disclosure to cardholders and requires them to affirmatively opt in before using the overdraft service. NetSpend also builds in guardrails to the overdraft service by permitting cardholders to "cure" any overdraft within 24 hours to avoid the overdraft fee, not charging a fee at all for any overdraft of $10 or less on general-purpose reloadable ("GPR") accounts, and capping the number of overdraft fee charges at three per month for GPR accounts.[8] Unfortunately, the CFPB appears to have foreclosed any discussion of how to better facilitate consumer choice. Instead, the Rule will take away consumer choice by effectively precluding prepaid issuers from continuing to offer prepaid overdraft services.

The CFPB's decision is especially remarkable in light of the CFPB's finding that "overdraft services offered in connection with prepaid products are relatively rare, and fees are relatively modest compared to similar fees associated with checking account overdraft programs."[9] Moreover, according to the Pew Charitable Trusts, approximately 27% of prepaid card users want an overdraft fee-for-service feature.[10] It would be misplaced to focus only on the corollary finding—that 71% of prepaid users do not want a prepaid overdraft feature—as a possible justification for regulating prepaid overdraft out of the market. NetSpend readily acknowledges that a significant number of consumers do not want an overdraft feature. Indeed, the number of cardholders who do not opt in to NetSpend's overdraft service is strong evidence that consumers have a real and clear choice on whether to use the overdraft feature. But NetSpend also wants to offer a product that appeals to the 27% of prepaid users who <u>do</u> want an overdraft service for their prepaid card. As summarized in NetSpend's April 5th Comment Letter, NetSpend has heard from a large

[8] For payroll card accounts, cardholders are not subject to a fee for an overdraft of $5 or less and NetSpend caps the instances in which an overdraft fee is charged at five times per month.
[9] 81 Fed. Reg. at 83,944.
[10] *See* Pew Charitable Trusts, "Why Americans Use Prepaid Cards" (Feb. 2014), at 18–19, http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/prepaidcardssurveyreportpdf.pdf

number of cardholders who highly value the overdraft services that NetSpend and its issuing banks provide.

NetSpend will not repeat in greater detail its concerns about the Rule's treatment of prepaid overdraft. Those concerns remain valid and are described more comprehensively in NetSpend's April 5th Comment Letter. But, in sum, the CFPB's Rule will take a service off the market that is desired by millions of prepaid users without the CFPB articulating a clear justification for its decision to do so.[11] And, the CFPB would take this action while preserving access to overdraft services for those consumers privileged to hold a checking account. Moreover, the CFPB is taking this action while acknowledging that prepaid overdrafts are less costly than debit card overdrafts. Leaving consumers with a higher-cost product, if it is available at all, strikes against the CFPB's avowed mission of "empowering consumers to take more control over their economic lives."[12]

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We appreciate the opportunity to provide comments on issues raised by the Proposal and are available to answer questions and provide additional information if helpful. We look forward to working with the CFPB to demonstrate the importance of delaying the effective date of the Rule to April 1, 2019 and of modifying the Rule to protect the informed choices that consumers make in using prepaid cards.

Sincerely,

Charles J. Harris
President

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[11] According to the Pew Report, *supra* note 10, at 1, "5 percent of adults, or about 12 million people, use prepaid cards at least once a month." Based on this figure, 27% of prepaid users who would like to have a prepaid overdraft service would equal approximately 3.25 million people.
[12] *See* https://www.consumerfinance.gov/about-us/.