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March 23, 2015

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

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

RE: Proposed rule & request for public comment on Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), Docket No. CFPB-2014-0031

Dear Ms. Jackson:

This letter is submitted on behalf of PayPal, Inc. ("PayPal") 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) (the "Prepaid Rule" or "Rule") that was published by the Bureau of Consumer Financial Protection (the "Bureau") in the Federal Register on December 23, 2014. PayPal is a leading online payments company, with more than 162 million active user accounts around the world. Headquartered in San Jose, California, PayPal has offices in several states in the United States, along with its international headquarters in Singapore and European headquarters in Luxembourg. PayPal offers consumers a "digital wallet" that connects into and leverages the traditional payment networks (whether ACH, bank card networks, or PIN networks), enabling PayPal's users to make and receive both personal and commercial payments in a safe, secure, efficient and cost-effective manner. In this letter, PayPal responds to the Bureau's request for public comment on the Prepaid Rule.

I. Executive Summary

PayPal thanks the Bureau for the opportunity to comment on the extensive documentation containing the Bureau's proposal for a rule on prepaid products.

After working through the Rule and considering its potential impact on current and future products, PayPal urges the Bureau to amend § 1005.2(b)(3)[1] so that digital wallets are not

[1] All section references in this letter refer to the Prepaid Rule's proposed amendments to 12 CFR parts 1005 or 1026, as applicable.

considered "prepaid accounts" under the Rule. Should the Bureau remain resolved to treat digital wallets as prepaid accounts in some circumstances, we ask the Bureau to revise the rule as described herein, to account for the differences between the two very different types of products.

PayPal acknowledges that there are some high-level similarities between prepaid cards and digital wallets. Both can enable a consumer to store funds and to make payments at a large number of merchants. Both increasingly offer account access online and/or via mobile devices. Both products are gaining traction and popularity among consumers, which merits a closer look at the consumer protections that should be applied to each set of products and services. However, these high-level similarities belie the fact that prepaid cards and digital wallets are fundamentally different products with different consumer use cases. We are concerned that applying identical rules to those products would do a disservice to the industry and consumers alike.

Unlike prepaid cards, digital wallets are used primarily not to access funds, but rather to access payment credentials such as consumers' credit, debit and prepaid cards (collectively, "payment cards") and bank accounts. Nearly 100% of PayPal's US consumer accounts are linked to at least one payment card or bank account as a funding source, whereas the average PayPal account balance held by a US consumer is only $6.00. Prepaid card fee structures and business models are substantially different from those of digital wallets. Applying the Prepaid Rule to digital wallets could create unnecessary impediments to consumers' use of such services. Moreover, some of the Bureau's proposed measures, in particular relating to disclosures, risk creating consumer confusion, because they would be irrelevant to the prevalent structure of digital wallets. Regulating products that do not pose the risks of consumer harm that the Bureau seeks to target with the Prepaid Rule would stifle innovation in the digital and mobile payments space, impairing the ability of companies like PayPal to develop new, valuable products to engage consumers in our increasingly digital society.

To support our request that the Bureau reconsider the Prepaid Rule's scope, PayPal does not believe the Advance Notice of Proposed Rulemaking on Electronic Fund Transfers (Regulation E) (Prepaid Cards ANPR) provided sufficient notice that the Rule would impact digital wallets. PayPal supports the Bureau's desire to apply Regulation E consumer protections to digital wallets, and in fact Regulation E already applies to PayPal accounts. We believe, however, that the Prepaid Rule is not an appropriate tool to further regulate digital wallets. PayPal would welcome an opportunity to work with the Bureau towards a framework for protections that better serve consumers, while ensuring businesses remain encouraged to innovate.

PayPal highlights three areas in which the proposed Rule's scope creates specific concerns and that we ask be carefully addressed and amended:

1. The Bureau should clarify that the Prepaid Rule's restrictions on "linked" credit features and products do not apply to a digital wallet's stored payment credentials.[2] Such stored payment credentials do not present the same risks of consumer harm as "overdraft protection" in the context of prepaid cards. The Prepaid Rule should recognize that consumers expect digital wallets' functionalities and protections to differ from those of

[2] PayPal believes the plain language of § 1026.12(h) supports the position, but PayPal requests the Bureau to eliminate any ambiguity by amending the Rule to provide express guidance on this matter.

prepaid cards. Credit cards and debit cards stored in digital wallets are already governed by Regulation Z and Regulation E, respectively, and many digital wallet providers (including PayPal) offer "Purchase Protection" for certain transactions. The PayPal Extras MasterCard and the PayPal Credit credit card are already subject to the protections of Regulation Z and should not be subject to the Prepaid Rule's restrictions on "linked" credit products. Finally, the Bureau should clarify the definitions of "card issuer" and "agent" under the Rule to eliminate confusion about how those terms apply in the digital wallet context.

2. It does not make sense to include digital wallets within the scope of the Prepaid Rule's proposed "pre-acquisition" disclosure regime. Disclosures cannot be standardized effectively across divergent industries. The Prepaid Rule's disclosure regime would confuse consumers and drastically increase abandonment of the PayPal account sign-up process. It does not account for the differences in fee structures and business models between digital wallets and prepaid cards, because it was seemingly tailored for the prepaid card industry. Even if the Bureau determines to apply the Prepaid Rule to digital wallets, the Prepaid Rule should at a minimum be amended to permit such disclosures to be provided at any time before the digital wallet first holds a balance. The Bureau should also make certain amendments to Comment 18(b)(1)(i)-2 and, more generally, amend the Rule to exempt mobile wallets from certain disclosure requirements.
3. The Bureau should also amend the Prepaid Rule to exclude peer-to-peer ("P2P") products from the definition of "prepaid account." P2P transactions are more similar to a "closed loop" payment system than to "open loop," general purpose reloadable prepaid cards. Further, P2P products like ours do not charge fees in the same manner as prepaid cards. Finally, § 1005.15(d)(1) of the Prepaid Rule should be amended (1) to permit online access to a digital wallet account balance as an alternative to telephone access, and (2) to allow digital wallet providers to send all written histories via email, rather than mail.

In summary, PayPal urges the Bureau to revisit its application of the Prepaid Rule to digital wallets and, at a minimum, make a number of critical amendments to the Rule's proposed scope. We stand ready to work with the Bureau to develop rules that foster emerging technologies in light of the consumer use cases that arise from such innovation.

II. The PayPal Digital Wallet

Transacting with PayPal

A transaction in PayPal's digital wallet can involve up to three participants in addition to us: a merchant, a consumer and the consumer's funding source provider. We value our relationship with our consumers and invest in this relationship; we strive to provide efficient customer service, account support, protection from loss, and create relevant products. Approximately 8,000 people in our customer service organization work to provide our consumers with answers and solutions when and where they need them, in over 20 languages. We have also developed a number of trust and security programs, including PayPal's Buyer Protection Program, that provide additional protection to consumers for qualifying purchases by reimbursing the consumer for the full amount of the purchase if a purchased item does not arrive or does not match the seller's description. Because PayPal facilitates payments from consumers to merchants

using so-called "push" payments into the merchant's PayPal account, we can also reverse such payments to refund the consumer if necessary. In addition, PayPal processes payments without revealing the consumer's financial data to the merchant, which reduces the risk of loss or unauthorized use of such data.

PayPal's Fee Structure

Prepaid card issuers often charge consumer fees for basic services provided to their customers. PayPal's transaction revenues, on the other hand, are generated primarily from fees charged to merchants on the total payment volume that we enable.

PayPal does not charge consumers fees to open an account, load an account, or to maintain an account. PayPal charges fees to consumers only in two narrow circumstances, and we disclose information about any fees before they are paid. First is a currency conversion spread that applies to multi-currency transactions (usually cross-border), and that is displayed to consumers before completing the transaction as part of the exchange rate that they pay. This fee applies to less than a quarter of PayPal's US consumer transactions. Second is a fee for consumers who fund a P2P transfer with a payment card. This fee applies to only a small fraction of PayPal's US P2P transfers, because the majority of our consumers fund P2P transfers with a bank account or PayPal balance, and in such cases PayPal extends a discount that eliminates this fee.

PayPal focuses on providing low-cost consumer products that democratize the access to merchant payment solutions for online business of all sizes. Through our technology and products, we believe we can help make digital payments more efficient and accessible.

III. Defining Features of Digital Wallets vs. Prepaid Cards

Digital wallets vary, but they can generally be identified by some or all of the following features:

1. Store payment credentials (i.e. payment cards or bank accounts) for real-time payments
2. Offer digital & mobile platforms
3. Store balances of funds received as a merchant or pre-loaded to the consumer's account
4. Facilitate payments to multiple, unaffiliated merchants
5. Offer P2P transfers

[Continued on following page]

	Pmt Credentials (#1)	Digital & Mobile Platforms (#2)	Stored Funds Required (#3)	Merchant Payments (#4)	P2P Transactions (#5)
PayPal	X	X		X	X
Venmo	X	X			X
Digital Wallets (generally)	X	X			
Prepaid Cards (generally)			X	X	

The chart above illustrates how the consumer value proposition of a digital wallet differs from that of a traditional prepaid card. Broadly speaking, consumers use digital wallets to electronically access payment cards or bank accounts to make real-time payments on a digital/mobile platform (features #1 and 2). Consumers do not have to pre-fund a balance in order to make payment, and most never carry a balance. On the other hand, the essence of traditional prepaid cards is indeed pre-funding – many prepaid cards must be loaded with funds to make payments to multiple merchants (features #3 and 4).

Although it is increasingly common for prepaid cards to be linked to an application (often mobile) that serves as a digital access device to the prepaid account, the purpose of these applications is to increase usage of the issuer's prepaid products. Thus, even if such a digital prepaid account were to eliminate the plastic card completely and operate solely as a digital/mobile prepaid card, it still would be differentiated from a true digital wallet, because the consumer value propositions are different. Digital wallets help consumers electronically access multiple payment credentials, whereas digital prepaid cards only allow consumers electronic access to the funds pre-loaded in their prepaid account.

IV. PayPal's Comments on the Prepaid Rule

Summary

A. The Bureau should amend § 1005.2(b)(3) so that digital wallets are not considered "prepaid accounts" under the Rule.
   1. Digital wallets do not present the same consumer risks that the Bureau seeks to remedy in the Prepaid Rule.
   2. Unlike prepaid cards, digital wallets are used primarily to access payment credentials, not funds.
   3. Even if digital wallets in some circumstances are treated as prepaid accounts, the Bureau should clarify that the Prepaid Rule's restrictions on "linked" credit features/products do not apply to a digital wallet's stored payment credentials.

4. The digital wallet industry received less opportunity than the prepaid card industry to participate in the Prepaid Rule's rulemaking process
5. The Prepaid Rule would disproportionately impact emerging technologies in the digital wallet space.
6. Prepaid card fee structures and business models are substantially different from those of digital wallets.

B. Even if digital wallets in some circumstances are treated as prepaid accounts, the Bureau should clarify that the Prepaid Rule's restrictions on "linked" credit features/products, and in particular § 1026.12(h), do not apply to a digital wallet's stored payment credentials.
1. The plain language of § 1026.12(h) supports the position that digital wallets like PayPal should not be subject to the 30-day credit card solicitation and access ban.
2. Stored payment credentials do not present the same risks of consumer harm as "overdraft protection."
3. The Prepaid Rule fails to recognize that consumers expect digital wallets' functionalities and protections to differ from those of prepaid cards, which risks increasing consumer confusion.
4. Credit cards and debit cards stored in digital wallets are already governed by Regulation Z and Regulation E, respectively, and many digital wallet providers (including PayPal) offer "Purchase Protection" for certain transactions.
5. The fee structures and business models that digital wallets like PayPal utilize do not pose the same risk of unexpected charges as "overdraft protection."
6. Like other credit card accounts stored in digital wallets, the PayPal Extras MasterCard and the PayPal Credit credit card are already subject to the protections provided under Regulation Z and should not be subject to the Prepaid Rule's restrictions on "linked" credit products.
7. The Bureau should clarify the definitions of "card issuer" and "agent."

C. The definition of "finance charge" under § 1026.4(a) should not encompass currency conversion fees charged in connection with multi-currency transactions.

D. Digital wallet providers should not be required to comply with the Prepaid Rule's proposed "pre-acquisition" disclosure regime.
1. Disclosures cannot be standardized effectively across divergent industries.
2. The Prepaid Rule's disclosure regime would confuse consumers and drastically increase abandonment of the sign-up process.
3. The Prepaid Rule's disclosure regime does not account for the differences in fee structures and business models between digital wallets and prepaid cards.
4. The Prepaid Rule's disclosure regime was tailored for the prepaid card industry, not for digital wallets.

E. If the Bureau decides to apply the Prepaid Rule to digital wallets, PayPal urges the Bureau at minimum to amend certain requirements of the Rule's pre-acquisition disclosure regime as described below.
1. The Prepaid Rule should be amended to permit the pre-acquisition disclosures to be provided at any time before the prepaid account first holds a balance.
2. The Bureau should make certain amendments to Comment 18(b)(1)(i)-2.

3. The Bureau should amend the Prepaid Rule to exempt mobile wallets from certain "pre-acquisition" disclosure requirements.

F. Summary: PayPal urges the Bureau to provide certain relief for digital wallets under the Prepaid Rule's pre-acquisition Disclosure Regime.

G. The Bureau should exclude P2P products from the definition of "prepaid account."

H. Section 1005.15(d)(1) of the Prepaid Rule should be amended (1) to permit online access to a digital wallet account balance as an alternative to telephone access, and (2) to allow digital wallet providers to send all written histories via email, rather than mail.

PayPal's Comments on the Prepaid Rule

A. <u>The Bureau should amend § 1005.2(b)(3) so that digital wallets are not considered "prepaid accounts" under the Rule.</u>

For the following reasons, PayPal urges the Bureau to amend § 1005.2(b)(3) so that digital wallets are not considered "prepaid accounts" under the Rule.

1. Digital wallets do not present the same consumer risks that the Bureau seeks to remedy in the Prepaid Rule.

PayPal believes the fact that a digital wallet is capable of being loaded with funds (and meets the other elements of the "prepaid account" definition) does not make it sufficiently similar to prepaid cards that it should be subject to the Prepaid Rule.

At a high level, the consumer risks inherent to the digital wallet space appear to be similar to those posed by the traditional prepaid card space. At stake is consumers' money as well as some of their most important personal data: their most-used payment accounts, spending habits, contact information, and other personal identifying information. Trust is the cornerstone of consumer financial services businesses, and consumer protection efforts by both industry and regulators are critical to building safe and trustworthy financial products that customers love.

However, these high-level consumer risks manifest in fundamentally different ways. Certain aspects of the Prepaid Rule illustrate this problem: the Prepaid Rule perceives harm posed by the traditional prepaid card industry, but such harm is not present in the digital wallet industry. To cite a few examples:

- The Prepaid Rule's disclosure regime requires the listing of so-called "static" fees such as ATM and withdrawal fees, none of which are relevant to how digital wallets operate.
- To justify the Rule's requirements around credit features that are "linked" to prepaid accounts, the Bureau cites how overdraft protection can impede consumer choice, and yet this phenomenon of "overdraft" does not exist in the digital wallet space.

PayPal is not aware of any research conducted by the Bureau or other persons that supports the proposition that consumers use digital wallets and prepaid cards interchangeably, or that consumers view both products as similar. On the contrary, we believe applying the Prepaid Rule

to digital wallets would fail to address the policy concerns that motivated the Rule in the first place, and it would impose an excessive regulatory burden on digital wallet providers.

2. Unlike prepaid cards, digital wallets are used primarily to access payment credentials, not funds.

Consumer Use Cases for Digital Wallets

Digital wallets like PayPal are designed for consumers and used by consumers with the intent to access multiple payment credentials. The whole concept of a "digital wallet" is to substitute the digital for the physical, enabling the consumer to store funds as well as access his or her bank accounts and payment cards.

Although some digital wallets – including the PayPal wallet – do permit consumers to store funds, in practice consumers primarily use digital wallets to access stored payment credentials. Unlike a prepaid card, consumers are not required to pre-load funds, and most never do pre-load a balance. Using PayPal as an example:

- The vast majority of consumer transactions originating in the US – whether P2P transfers or payments to merchants – are funded by stored payment credentials. Only a small fraction are funded by PayPal account balance.
- Nearly 100% of PayPal's US consumer accounts are linked to a payment card or bank account as a funding source.
- Many consumers who open a PayPal account do so as part of making a payment at a merchant Website, and their only option at that point is to pay with a payment card.
- A credit card is added to a majority of new PayPal wallets within seven days of account activation.
- The average PayPal account balance held by a US consumer is only $6.00.

To illustrate the above, assume a consumer uses a bank account linked to her PayPal account as a funding source. If the consumer has no PayPal account balance, and she sends $10 to a merchant for a purchase, PayPal initiates an ACH debit transaction from the consumer's linked bank account to obtain the funds, and funds are sent to the merchant's PayPal balance. The merchant may then use this balance for other transactions – for example, to pay another merchant for goods or services – or withdraw the balance to the merchant's own linked bank account.

Only a small percentage of PayPal customers store funds in their PayPal accounts for any period of time, and the large majority of those who do are not consumers: they are merchants that receive a steady stream of payments from customers. Our consumer customers, on the other hand, in the rare cases that they do hold a balance, tend to hold it only briefly. For example, they may receive a P2P transfer, but they typically use that balance quickly, whether that is by sending another P2P transfer, paying a merchant for goods or services, or withdrawing their balance to a linked bank account.

On the first day that a new customer sets up a PayPal account, he or she cannot add funds to his or her PayPal account balance.[3] Customers cannot use payment cards to fund a PayPal balance, they can only use cards to pay another PayPal account. It takes some time to verify a bank account before it can be linked and used to fund one's own PayPal account. Therefore, new customers generally cannot send money or make purchases with a PayPal account on Day 1 unless they link a payment card to the PayPal account and complete the card verification process. This emphasizes how digital wallets are tightly interwoven with storing payment credentials.

Payment Credential Security & Consumer Trust

PayPal also provides consumers a separate value proposition that is unique to digital wallets: we can process payments without turning the payment credentials over to the merchant. Consumers who do not already know and trust a particular merchant – especially in an e-commerce or mobile transaction – can recognize PayPal's brand and entrust us with their financial data, whereas they might not have trusted the merchant to do so. PayPal backs up this service with an ability to store the consumer's billing information for a faster checkout experience, and by our strong customer support to help with any problems that might arise.

This value proposition is dependent upon consumers' trust in PayPal, which in turn is requires that consumers understand PayPal's role as an intermediary in the payment system. This role is very different from that of prepaid cards. Absent a service like ours, consumers must provide payment credentials directly to merchants and trust that they will keep the data safe. Over 162 million active accounts rely upon PayPal to protect their financial data by facilitating billions of dollars of transactions each year without exposing the consumers' payment credentials to merchants.

This service demonstrates again how digital wallets like PayPal are intrinsically linked to the function of storing payment credentials and providing services that enhance this core function, which is fundamentally different from the focus of prepaid card issuers.

3. Even if digital wallets in some circumstances are treated as prepaid accounts, the Bureau should clarify that the Prepaid Rule's restrictions on "linked" credit features/products do not apply to a digital wallet's stored payment credentials.

The supplemental information to the Prepaid Rule states that the Rule does not apply to digital wallets that can store payment credentials but cannot be loaded with funds. However, PayPal requests the Bureau to further clarify that, even if digital wallets in some circumstances are treated as prepaid accounts, the Rule's restrictions on "linked" credit features and products do not apply to <u>any</u> digital wallet's ability to store payment credentials, including digital wallets like PayPal that can store funds for some consumers but mainly store payment credentials.

[3] When a recipient is sent funds by a PayPal account holder before the recipient opens a PayPal account, which rarely occurs. If the recipient determines to open a PayPal account to receive the funds, she could get access to the funds on the same day she opens the account. But receiving funds from a third party is not the same as pre-loading funds to one's own account.

We do not believe that the Bureau's intent was to treat digital wallets like PayPal differently from other digital wallets simply because a consumer has the ability to store funds. The policy rationale underlying the decision to exempt digital wallets that only store payment credentials applies equally in this scenario: it makes no more sense to apply the restrictions on "linked" credit features to PayPal's ability to store payment credentials than it would to apply them to a digital wallet that can only store payment credentials. Digital wallets such as PayPal do not have "overdraft" as it is understood in the prepaid card industry, just as prepaid cards have no analogue to how digital wallets store and access different funding sources in a digital wallet. In addition, if the rules on "linked" credit features were to apply to digital wallets like PayPal, then millions of consumers would be denied critical features that PayPal currently provides at no extra cost. As noted above, a significant majority of PayPal's US consumer accounts are linked to at least one credit card.

For PayPal, one of the most significant issues presented in the Rule concerns the credit solicitation and access limitations proposed in § 1026.12(h). In its current form, this section is far too broad and could even be interpreted to limit PayPal's ability to permit consumers to add a credit card account to their PayPal Wallet within 30 days of "registering" a PayPal account. While potentially achieving the intended results for traditional prepaid cards, the 30-day ban on linking (or soliciting a consumer to link) a credit card to a prepaid account has no relevance to digital wallets such as PayPal. As described in other parts of this letter, in order to use digital wallets like PayPal, consumers who sign up for a PayPal account cannot immediately pre-load funds to their PayPal account. Their only choice for immediate payment is to use a payment card or, in some cases, to complete an immediate bank verification process and authorize an ACH debit to their bank account.

We urge the Bureau to modify § 1026.12(h) in order to clarify that this restriction does not apply to a digital wallet's funding sources. Based on functionality of the PayPal wallet, as well as a fair reading of the Rule, this interpretation of § 1026.12(h) is far too broad. We do not believe the Bureau intended to effectively ban a critical consumer value proposition of digital wallets by preventing new customers from linking a credit card as a funding source for their PayPal wallet. Impeding this practice would deprive new PayPal users of the ability to store their payment credentials with PayPal, forcing them instead to expose their financial information to merchants until 30 days after their PayPal account becomes "registered." Such a restriction would in no way help consumers to make informed choices.

4. The digital wallet industry received less opportunity than the prepaid card industry to participate in the Prepaid Rule's rulemaking process.

The Bureau's "Advance Notice of Proposed Rulemaking on Electronic Fund Transfers (Regulation E) (Prepaid Cards ANPR)" put prepaid card issuers on notice that a significant regulation was being developed, and it offered them a chance to participate in the early, conceptual phases of rulemaking. We do not believe the scope of the ANPR was sufficient to provide notice that the Prepaid Rule would impact digital wallet providers such as PayPal.

PayPal has developed consumer protections that meet and go beyond the requirements of Regulation E, and we would appreciate the opportunity to contribute to the development of a

regulation tailored to fit our industry. The digital wallet space is vibrant and changing, and it deserves regulatory treatment that contemplates where it is and accommodates where it is going. The Bureau should amend § 1005.2(b)(3) so that digital wallets are not considered "prepaid accounts" under the Rule.

5. The Prepaid Rule would disproportionately impact emerging technologies in the digital wallet space.

In analyzing the Prepaid Rule, we have spent time conversing with smaller participants in the digital wallet industry, including emerging companies in the virtual currency space. A recurring theme is that these emerging companies want regulatory certainty, so that they know how to run their businesses. However, they also do not have the resources to assess the impact of the Prepaid Rule and communicate with the Bureau about it, especially because they did not get notice that digital wallets would be so affected prior to the Rule's issuance.

As a larger participant in the digital wallet space, PayPal had the resources to review the Rule in enough detail to prepare this comment letter, but we are concerned that smaller players in the industry are not able to do so. We are also concerned that we have not had time to identify all of the ways the Prepaid Rule could affect the new technologies we are developing, especially given the lack of clarity in how certain requirements would be applied in a business that differs widely from the prepaid card industry. Applying the Rule in its current form to digital wallets could impose uncertainty that would dampen innovation by both large and small industry participants.

The Bureau clearly sees value in taking the time needed to understand an industry and propose rules that align with how consumers use products in the industry. The Bureau also endeavors through efforts like Project Catalyst to show leadership in technology, with the goal of fostering innovation and reducing regulatory burden on emerging technology trends. PayPal urges the Bureau to amend § 1005.2(b)(3) so that digital wallets are not considered "prepaid accounts" under the Rule..

6. Prepaid card fee structures and business models are substantially different from those of digital wallets.

The Prepaid Rule does not account for the vast differences between digital wallets' and prepaid cards' business models and consumer fee structures. Digital wallets like PayPal have developed a two-sided market where transaction revenue is generated primarily from fees charged to merchants, not to consumers.

PayPal does not charge consumers fees to open an account, load an account, or to maintain an account. PayPal charges fees to consumers only in two narrow circumstances, and we disclose information about any fees before they are paid. First is a currency conversion spread that applies to multi-currency transactions (usually cross-border), and that is displayed to consumers before completing the transaction as part of the exchange rate that they pay. This fee applies to less than a quarter of PayPal's US consumer transactions. Second is a fee for consumers who fund a P2P transfer with a payment card. This fee applies to only a small fraction of PayPal's US P2P transfers, because the majority of our consumers fund P2P transfers with a bank account or

PayPal balance, and in such cases PayPal extends a discount that eliminates this fee. In short, PayPal's consumer fee structure is transparent and relatively simple, and unlike prepaid card issuers, we do not charge any "overdraft" fees or monthly fees for the right to access credit accounts stored in our digital wallet.

As noted above, PayPal also provides consumers a separate value proposition that is unique to digital wallets: we can process payments without turning the payment credentials over to the merchant. This service demonstrates again how digital wallets like PayPal are intrinsically linked to the function of storing payment credentials and providing services that enhance this core function, which is fundamentally different from the focus of prepaid card issuers.

B. Even if digital wallets in some circumstances are treated as prepaid accounts, the Bureau should clarify that the Prepaid Rule's restrictions on "linked" credit features/products, and in particular § 1026.12(h), do not apply to a digital wallet's stored payment credentials.

The supplemental information to the Prepaid Rule states that the Rule does not apply to digital wallets that can store payment credentials but cannot be loaded with funds. However, as described in other parts of this letter, consumers who open a digital wallet like PayPal can either add funds (cash) or payment credentials to their wallet. PayPal requests the Bureau to further clarify that, even if digital wallets in some circumstances are treated as prepaid accounts, the Rule's restrictions on "linked" credit features and products do not apply to a digital wallet's ability to store payment credentials. Although PayPal believes the plain language of the Rule supports this position, PayPal requests the Bureau to eliminate any ambiguity by amending the Rule to provide express guidance.

PayPal believes it makes no more sense to apply the restrictions on "linked" credit features to PayPal's ability to store payment credentials than it would to apply them to a digital wallet that can only store payment credentials. The underlying policy rationale is the same. Digital wallets such as PayPal do not have "overdraft" as it is understood in the prepaid card industry, just as prepaid cards have no analogue to how digital wallets store and access different funding sources. In addition, if the rules on "linked" credit features were to apply to digital wallets like PayPal, then millions of consumers would be denied critical features that PayPal currently provides at no extra cost.

A significant majority of PayPal's US consumer accounts are linked to at least one credit card. For PayPal, one of the most significant issues presented in the sections on "linked" credit features concerns the credit solicitation and access limitations proposed in § 1026.12(h). In its current form, this section could even be interpreted to limit PayPal's ability to permit consumers to add a credit card account to their PayPal wallet within 30 days of "registering" a PayPal account. Based on the functionality of the PayPal wallet, as well as a fair reading of the Rule, this interpretation of § 1026.12(h) is far too broad. While potentially achieving the intended results for traditional prepaid cards, the 30-day ban on linking (or soliciting a consumer to link) a credit card to a prepaid account has no relevance to digital wallets such as PayPal.

We urge the Bureau to modify § 1026.12(h) in order to clarify that it does not apply to a digital wallet's funding sources. We do not believe that the Bureau's intent was to treat digital wallets like PayPal differently from other digital wallets simply because a consumer has the ability to store funds in the PayPal digital wallet. Further, we do not believe the Bureau intended to effectively ban a critical consumer value proposition of digital wallets by preventing new customers from linking a credit card as a funding source for their PayPal wallet. Many consumers choose to store their credit card with PayPal because we do not reveal billing information to merchants, and eliminating this choice would force consumers instead to expose their credit card data to merchants for 30 days after their PayPal account becomes "registered."

1. The plain language of § 1026.12(h) supports the position that digital wallets like PayPal should not be subject to the 30-day credit card solicitation and access ban.

PayPal believes the plain language of § 1026.12(h) supports the position that PayPal should not be subject to the 30-day credit card solicitation and access ban; however, PayPal requests the Bureau to eliminate any ambiguity by amending the Rule to provide express guidance on this matter. First, PayPal is unable to "…open a credit account for a consumer…" because PayPal is not the issuer of the credit card. See § 1026.12(h)(1). Second, PayPal does not make a "solicitation" to open a credit card, as § 10216.12(h)(2) defines a solicitation as an offer by the card issuer to open a credit card that does not require the consumer to complete an application.

2. Stored payment credentials do not present the same risks of consumer harm as "overdraft protection."

There are several reasons why the proposed § 1026.12(h) should not limit a consumer's choice to add a credit card to their PayPal Wallet within 30 days of the account being opened. Critically, PayPal never offsets or "sweeps" funds from a consumer's PayPal digital wallet balance to pay a balance due on any credit card linked to the wallet. In addition, the current process for adding a credit card to a consumer's PayPal account already provides that the consumer protection measures intended by the Prepaid Rule occur outside of the PayPal account creation experience and are satisfied by the third-party credit card issuer: (1) promoting the informed use of credit by ensuring meaningful disclosure of the credit terms so that consumers will be able to compare more readily the various credit terms available to them; (2) ensuring that features of the credit card are fully, accurately, and effectively disclosed to consumers in a manner that permits the consumer to understand the costs, benefits and risks associated with the account; and (3) separating the decision to purchase and register a prepaid account from the decision to accept an offer to add a credit card to the account.

The PayPal account creation experience is separate and distinct from the experience to add a credit card as a funding instrument to the PayPal Wallet. This is both by necessity and by design.

By necessity, all credit card features that are added to a consumer's PayPal Wallet are issued by third-party banks, such as Bank of America, JP Morgan Chase, Capital One, Synchrony Bank (the issuer of the PayPal Extras MasterCard), and Comenity Capital Bank (the issuer of the

PayPal Credit credit card). As such, each bank issuing a consumer credit card is subject to prudential regulation and oversight, as well as compliance with all consumer protection laws applicable to credit cards, including the Truth in Lending Act and Regulation Z. Therefore, the credit card issuing banks enter into the credit agreement with the consumer and, as the "creditor," are responsible for all the obligations of Subparts B and G, including providing appropriate account opening disclosures, ability to pay compliance, periodic statements, payment allocation, rate increases, dispute resolution etc. Thus, the Regulation Z obligations are satisfied by the credit card issuing banks outside of the PayPal account creation process.

By design, PayPal intentionally requires the account opening experience – which includes the submission of personal information about the consumer, agreement to the PayPal User Agreement and Privacy Policy, and E-Sign consent – to be concluded prior to adding a credit card or any funding instrument to the PayPal Wallet, as there are certain fraud and other screens that PayPal employs prior to opening an account and permitting a consumer to add a funding instrument.

In addition, in the context of digital wallets like PayPal, promoting the informed use of credit and ensuring features of the credit card are accurately and effectively disclosed to the consumer occurs outside of the PayPal account creation experience and is satisfied by the third-party credit card issuer. Thus, the likelihood of consumer harm is mitigated because: (1) credit card issuers must provide the Regulation Z account opening disclosures to consumers, (2) consumers must submit an application for credit, (3) credit card issuers must comply with the ability to pay requirements under Regulation Z, (4) approved consumers must agree to the credit card account agreement before utilizing the line of credit, (5) many credit card issuers do not charge finance charges or fees in the first billing cycle following the initial purchase using the credit card (e.g. the grace period), and (6) credit card issuers are required to provide the periodic billing statement to consumers at least 21 days in advance of a required minimum payment is due. A significant majority of PayPal's US consumer accounts are linked to at least one credit card as a funding source, which means they have already applied and been approved for credit with the issuing bank before opening a PayPal digital wallet account.

3. The Prepaid Rule fails to recognize that consumers expect digital wallets' functionalities and protections to differ from those of prepaid cards, which risks increasing consumer confusion.

PayPal believes the Prepaid Rule does not incorporate the perspective of consumers who use digital wallets. As described above in greater detail, consumers use digital wallets primarily to access different payment credentials, to benefit from the convenience and trust that wallets like PayPal offer to consumers. A significant majority of PayPal's US consumer accounts are linked to at least one credit card. Prepaid cards, on the other hand, are used primarily to store funds, as a proxy for a bank account. Unlike prepaid cards, consumers do not expect digital wallets like PayPal to operate on a solely "prepaid" basis.

This is demonstrated by the fact that a credit card is added to a majority of new accounts within seven days of account activation. Our research has shown that many of our new customers open an account with an immediate intent to make a purchase. By not permitting a credit card to be

added to the PayPal wallet, the Rule would frustrate the customer's intent and create a bad user experience without any real benefit or additional consumer protection. We do not believe that the Bureau's intent was to treat digital wallets like PayPal differently from other digital wallets simply because a consumer has the ability to store funds in the PayPal digital wallet. In addition, the average PayPal account balance held by a US consumer is only $6.00, and balances tend to be maintained for short time periods.

More broadly, PayPal is not aware of any research conducted by the Bureau or other persons that supports the proposition that consumers use digital wallets and prepaid cards interchangeably, or that consumers view both products as similar. On the contrary, we believe applying the Rule's restrictions on "linked" credit features to digital wallets would fail to address the policy concerns that motivated the Rule in the first place, and it would impose an excessive regulatory burden on digital wallet providers.

4. Credit cards and debit cards stored in digital wallets are already governed by Regulation Z and Regulation E, respectively, and many digital wallet providers (including PayPal) offer "Purchase Protection" for certain transactions.

The Prepaid Rule does not account for the measures that digital wallet providers such as PayPal have already taken to protect our customers. Regulation Z already applies to all credit card accounts stored in the PayPal wallet. PayPal also provides a service called "Purchase Protection" to give our consumers extra coverage on certain transactions.

Since all credit cards that are added to a consumer's PayPal Wallet are issued by third-party banks, such as Bank of America, JP Morgan Chase, Capital One, Synchrony Bank (the issuer of the PayPal Extras MasterCard), and Comenity Capital Bank (the issuer of the PayPal Credit credit card), it is these issuers that are obligated to comply with the consumer protections applicable to credit cards, including those under § 1026.12(c) and 1026.13 regarding claims and defenses and billing error disputes. PayPal also offers "Purchase Protection" for eligible online purchases. Subject to certain restrictions, PayPal will reimburse a buyer for the full purchase price of an item (including original shipping costs) in cases where a buyer does not receive a purchased item or receives an item that is significantly different than described.

5. The fee structures and business models that digital wallets like PayPal utilize do not pose the same risk of unexpected charges as "overdraft protection."

The Bureau has expressed concern over the imposition of fees and finance charges from credit cards that may accrue before consumers are aware that they have opened and linked a new credit card or feature to a prepaid account. This policy concern underlies the Prepaid Rule's restrictions on "linked" credit features and products. However, these concerns are not relevant to the fee structures and business models utilized by digital wallets like PayPal.

Unlike prepaid card issuers, PayPal does not charge "overdraft" fees when credit card accounts are accessed by our digital wallet. Rather, we have developed a two-sided market where

transaction revenue is generated primarily from fees charged to merchants, not to consumers. PayPal encourages consumers to add credit card account credentials to the PayPal wallet not to increase consumer fees, but rather so consumers may maximize the use and convenience of their digital wallet.

PayPal does not charge consumers fees to open an account, load an account, or to maintain an account. PayPal charges fees to consumers only in two narrow circumstances, and we disclose information about any fees before they are paid. First is a currency conversion spread that applies to multi-currency transactions (usually cross-border), and that is displayed to consumers before completing the transaction as part of the exchange rate that they pay. This fee applies to less than a quarter of PayPal's US consumer transactions. Second is a fee for consumers who fund a P2P transfer with a payment card. This fee applies to only a small fraction of PayPal's US P2P transfers, because the majority of our consumers fund P2P transfers with a bank account or PayPal balance, and in such cases PayPal extends a discount that eliminates this fee.

6. Like other credit card accounts stored in digital wallets, the PayPal Extras MasterCard and the PayPal Credit credit card are already subject to the protections of Regulation Z and should not be subject to the Prepaid Rule's restrictions on "linked" credit products.

Consistent with the arguments outlined above, the PayPal Extras MasterCard (which is issued by Synchrony Bank) and the PayPal Credit credit card (which is issued by Comenity Capital Bank), just like other credit cards, should not be subject to the Prepaid Rule's 30-day ban on soliciting consumers to add a credit card to a prepaid account. The only unique aspect of these credit products, as compared to any other credit card a consumer may use as a funding source, is the ability to service them online via the PayPal wallet.

Like all other credit cards added to a consumer's PayPal wallet, the PayPal Credit credit card and the PayPal Extras MasterCard are issued by unaffiliated regulated financial institutions – Comenity Capital Bank and Synchrony Bank, respectively. As such, each bank issuing the PayPal Extras MasterCard and the PayPal Credit credit card is subject to prudential regulation and oversight, and is responsible for compliance with all consumer protection laws applicable to credit cards, including Regulation Z. Therefore, Comenity Capital Bank and Synchrony Bank enter into the credit agreement with the consumer and, as the "creditor," are responsible for all the obligations of Subparts B and G, including providing appropriate account opening disclosures, ability to pay compliance, periodic statements, payment allocation, rate increases, dispute resolution, etc. Conversely, like other credit cards, consumers must apply for PayPal Credit or PayPal Extras MasterCard separately from the PayPal account opening process and then must add the PayPal Credit credit card or PayPal Extras MasterCard to their PayPal Wallet.

Critically, PayPal never offsets or "sweeps" funds from a consumer's PayPal digital wallet balance to pay a balance due on any credit account liked to the wallet, including the PayPal Credit credit card or the PayPal Extras MasterCard. Consumers are charged the same limited fees (described above) for accessing the PayPal Credit credit card and PayPal Extras MasterCard as they are charged for accessing any other credit card account through the wallet.

In conclusion, both PayPal Credit credit card and the PayPal Extras MasterCard should be treated like any other credit card that a consumer can add to their PayPal wallet.

7. The Bureau should clarify the definitions of "card issuer" and "agent."

PayPal urges the Bureau to provide additional clarity around the interplay between the meaning of "card issuer" and "agent." PayPal believes that the guidance in the proposed Rule supports the position that it should not be deemed to be a "card issuer," as there is no agent relationship between PayPal and the various issuers of credit cards.

Official Comment § 1026.2(a)(7)-1 indicates that merely providing services relating to the production of credit cards or data processing for others does not make one the agent of the card issuer. Further, Comment 2(a)(7)-1 goes on to state that an agreement between the financial institution and the prepaid card issuer provides that the cardholder may use a line of credit offered by the financial institution to pay obligations incurred by the use of the credit card. PayPal believes that this guidance indicates that PayPal would not be an agent of the financial institution extending the credit. However, the language used in this Comment contains sufficient ambiguity to raise questions regarding the agency relationship between PayPal and the credit card issuers.

Further complicating the analysis is that, as drafted, it appears as though Comment 2(a)(7)-1 establishes a situation where a third-party offering the credit plan would be an agent of the prepaid card issuer where credit is being pulled or accessed by the prepaid card. Under this construct, the prepaid card issuer would be considered a card issuer. While the stated purpose of the definition is to prevent circumvention of consumer protections, the result appears to be that there could be two card issuers for one credit card. It is unclear which entity – the prepaid card issuer or the credit card issuer – bears the burden of complying with Subparts B and G of Regulation Z.

In these instances, the appropriate position is that the credit card issuing bank should be responsible for complying with Regulation Z, since it is in the best position to fulfill the consumer protection obligations of issuing a credit card. However, PayPal seeks clarity from the Bureau regarding Comment 2(a)(7)-1 and the agency relationship (if any) between a prepaid card issuer and a third-party credit card issuer.

C. <u>The definition of "finance charge" under § 1026.4(a) should not encompass currency conversion fees charged in connection with multi-currency transactions.</u>

The Prepaid Rule's requirements for credit accounts that are "linked" to a prepaid account – and in particular, the definition of "finance charge" under § 1026.4(a) – are so broad that they threaten to severely impact valuable features that are currently offered to consumers at no extra charge.

PayPal runs certain transactions over the Automated Clearing House ("ACH") payment rails. For certain ACH transactions, PayPal "fronts" payment to the originator even though the funds have

not yet cleared the receiving depository financial institution or the ACH network clearing houses. For example, assume a sender sends $10 to a recipient, and the transaction is funded by the sender's bank account. PayPal will in some cases send $10 to the recipient as soon as the transaction is requested, even though PayPal has not yet received the funds from the sender. PayPal does not charge the sender any extra fees or interest for this, even if (for example) the sender's bank account turns out to have insufficient funds. However, in all multi-currency transactions (usually cross-border), PayPal charges a currency conversion fee.

In addition, consumers sometimes open a PayPal account during the checkout process on the website of a merchant that accepts PayPal. The consumer often does not yet have a funding source added to her PayPal wallet, but she may want to use PayPal to complete the purchase from the merchant. In certain of these cases, PayPal may fund the purchase to the merchant before PayPal actually receives the funds from the consumer. PayPal does not charge the consumer any extra fees or interest for this service, even if (for example) the consumer uses a bank account that turns out to have insufficient funds. However, as in the previous example, PayPal charges a currency conversion fee on multi-currency transactions.

Consequences of expanded definition of "finance charge"

Under § 1026.2(a)(17)(iii), a card issuer who extends credit that is not subject to any finance charge or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments is not deemed to be a "creditor" and, therefore, is not subject to the obligations of Subparts B and G of Regulation Z. However, in the context of the preceding multi-currency transaction examples, the deferral of payment could be considered "credit" under § 1026.2(a)(14) and the imposition of the currency conversion fee could be construed to be a "finance charge" under § 1026.4(a), even though this fee is charged in <u>all</u> multi-currency transactions.

If "finance charge" were interpreted in this way under the Prepaid Rule, then Regulation Z requirements could apply to such multi-currency transactions. In addition, PayPal may be prevented from engaging in such transactions within 30 days of when the consumer first "registered" her PayPal account.

PayPal already complies with Regulation E with respect to these transactions. If Regulation Z were to apply, PayPal would likely stop offering these features to consumers. As a result, the sender's multi-currency transactions would be delayed for several business days, impacting nearly a quarter of PayPal's US consumer transactions and depriving consumers of a valuable service that PayPal currently offers consumers at no extra cost.

These types of transactions, and specifically the currency conversion fee, should not implicate the definition of "finance charge" and, by extension, subject a card issuer to the "creditor" obligations of Subparts B and G. As the proposed Rule points out, the definition of "finance charge" does not include charges of a type payable in a comparable cash transaction. See 15 USC 1605(a). Revised § 1026.4(b)(2)(ii) also reinforces this proposition, stating that examples of finance charges include, "any charge imposed in connection with the extension of credit, for carrying a credit balance, or for credit availability…" Based on the above multi-currency transaction examples, the currency conversion fee is clearly not imposed in connection with an

extension of credit, for carrying a credit balance or for credit availability. Rather, the currency conversion fee is transaction-based fee that can be incurred even when there are funds on the prepaid account and the overdraft credit feature is not implicated. Thus, the fee is of a type that is incurred in a comparable cash transaction, not in connection with an extension of credit and, as such, it should not be deemed to be a "finance charge."

We urge the Bureau to recognize the unreasonable burdens that would be placed on a prepaid account issuer under "creditor" obligations of Subparts B and G of Regulation Z if such multi-currency ACH transactions were to implicate the "finance charge" and "creditor" construct under § 1026.2(a)(17). Further, given the nature of such multi-currency transactions, many of the Subpart B and G obligations would be inapplicable. For example, it is wholly unreasonable that a prepaid account issuer would be required to perform an ability to pay analysis in order to process such transactions. Further, many of the obligations of Subparts B and G are either inapplicable to the transaction (e.g., 21-days to repay credit card debt, payment allocation requirements, and rate increase limitations), or are already required under Regulation E and satisfied by PayPal (e.g., periodic statements, error resolution procedures, and fraud protection). Requiring these transactions to comply with the obligations of Regulation Z misapplies the principles of the proposed Rule to promote the informed use of credit and, conversely, creates an awkward application of law that serves no meaningful consumer protection interest.

D. Digital wallet providers should not be required to comply with the Prepaid Rule's proposed "pre-acquisition" disclosure regime.

The Bureau has expressed concern about consumer fees charged by the prepaid card industry, including that such fees may be charged before consumers become aware of them, and that consumers may not understand how the fees are applied. The Bureau also seems concerned that consumers do not have easy access to the information necessary to engage in accurate comparison shopping among prepaid products. From this premise, the Bureau goes on to construct a comprehensive disclosure regime under the Prepaid Rule, a primary goal of which is to clarify the fee structure and other key features of prepaid products, thereby facilitating comparison shopping.

However, PayPal believes that prepaid cards and digital wallets are too different to effectively standardize disclosures across both industries, and that attempting to do so would confuse consumers rather than facilitate comparison shopping. The Prepaid Rule was conceived primarily with the traditional prepaid card industry in mind. It does not envision the perspective of consumers who use digital wallets and, by imposing the pre-acquisition disclosure regime on digital wallets, it incorrectly assumes that the same harms perceived in the prepaid card industry apply to the fee structures and business models of the digital wallet industry.

1. Disclosures cannot be standardized effectively across divergent industries.

The Bureau intends to develop a system of standard disclosures, like those of nutrition labels on food. The purpose of standardized disclosures is to help inform consumers about like products –

to give consumers a common basis for comparing products that are used for the same basic purpose.

PayPal sees this as an admirable goal. However, for a system of standardized disclosures to serve its logical and useful purpose, certain conditions must be present:

- Consumers must use the underlying products for the same basic purpose;
- The information shown on the disclosures must represent characteristics that apply to the vast majority of underlying products; and
- The information shown on the disclosures must be relevant to the purchase decision.

Nutrition labels meet these elements. Nutrition labels are used on food products: the purpose of all food is to be consumed; the information shown (e.g. calories, carbohydrates) represents characteristics of the vast majority of food products; and the information shown impacts consumers' health and is therefore relevant to the purchase decision. Nutrition labels inform people about what they are consuming and how it may impact their health.

PayPal believes the disclosure regime proposed in the Prepaid Rule does not meet the elements above. The so-called "static fees" required to be listed on the proposed short-form disclosure (ATM fees, cash reload fees, per purchase fees and monthly fees) are not applicable to digital wallets. Further, PayPal believes this is not likely to change. Digital wallet users now expect most services to be low-fee or free, and we think it is unlikely digital wallets will innovate toward more consumer fees after firmly differentiating themselves from such fees.

2. The Prepaid Rule's disclosure regime would confuse consumers and drastically increase abandonment of the sign-up process.

Because the information on the proposed disclosures does not represent characteristics of digital wallets, it cannot be relevant to consumers' decision of whether to use digital wallets, or which digital wallets to use. It is unfair and inappropriate to compare digital wallets to prepaid cards by requiring the same disclosures for both. PayPal believes our products would compare favorably to prepaid cards in many ways, but there are many differences between the two, and consumers don't consider them to be comparable alternatives.

One might argue that the disclosures as proposed would benefit digital wallets, because our fee structures might compare favorably to those of prepaid cards. However, this assumes that consumers use the two products in the same way and consider them to be comparable. This is not the case. On the contrary, we believe using the proposed disclosures would confuse and alarm our potential customers by raising unnecessary questions. Consumers do not expect to pay ATM fees and other charges listed on the short-form disclosure, and displaying these could raise questions about whether those fees could apply at some time in the future, or whether any action taken by the consumer could trigger those fees, when in reality the consumer would not incur such a fee.

As a result, PayPal expects it would see a major increase in potential customers abandoning the signup process, or calling the customer support line in confused frustration. This is antithetical to

a user experience that has attracted over 162 million active accounts to our platform. It is also a more compelling problem for digital wallet providers than for traditional prepaid card issuers. When a consumer is shopping online and initiates the sign-up process for a PayPal account and sees a disclosure that describes fees and terms that aren't intuitively related to a digital wallet, the consumer is likely to get confused. We have learned from much experience and user testing that even minimal barriers to completing the sign-up phase can cause massive increases in abandonment of the process.

This impact is even more notable in the mobile context, which is particularly important for digital wallets, because mobile use cases are driving innovation in the space. Please see below "The Bureau should amend the Prepaid Rule to exempt mobile wallets from certain pre-acquisition disclosure requirements."

3. The Prepaid Rule's disclosure regime does not account for the differences in fee structures and business models between digital wallets and prepaid cards.

Fee Structures

The Prepaid Rule's disclosure regime does not account for the vast differences between digital wallets' and prepaid cards' business models and consumer fee structures. Digital wallets like PayPal have developed a two-sided market where transaction revenue is generated primarily from fees charged to merchants, not to consumers.

PayPal does not charge consumers fees to open an account, load an account, or to maintain an account. PayPal charges fees to consumers only in two narrow circumstances, and we disclose information about any fees before they are paid. First is a currency conversion spread that applies to multi-currency transactions (usually cross-border), and that is displayed to consumers before completing the transaction as part of the exchange rate that they pay. This fee applies to less than a quarter of PayPal's US consumer transactions. Second is a fee for consumers who fund a P2P transfer with a payment card. This fee applies to only a small fraction of PayPal's US P2P transfers, because the majority of our consumers fund P2P transfers with a bank account or PayPal balance, and in such cases PayPal extends a discount that eliminates this fee.

Business Models

PayPal also provides consumers a separate value proposition that is unique to digital wallets: we can process payments without turning the payment credentials over to the merchant. Consumers who do not already know and trust a particular merchant – especially in an e-commerce or mobile transaction – can recognize PayPal's brand and entrust us with their financial data, whereas they might not have trusted the merchant with that data. PayPal backs up this service with an ability to store the consumer's billing information for a faster checkout experience, and by our strong customer support to help with any problems that might arise.

This value proposition is dependent upon consumers' trust in PayPal, which in turn requires that consumers understand PayPal's role as an intermediary in the payment system. Our P2P transfer

tool, which is fee-free except for the limited circumstances described above, has also helped bring consumers onto our platform.

PayPal's role is very different from that of prepaid cards. Absent a service like ours, consumers must provide payment credentials directly to merchants and trust that they will keep the data safe. Over 162 million active accounts rely upon PayPal to protect their financial data by facilitating billions of dollars of transactions each year without exposing the consumers' payment credentials to merchants.

This service demonstrates again how digital wallets like PayPal utilize a business model that is fundamentally different from that of prepaid cards, and that the disclosure regime proposed under the Prepaid Rule does not align with how consumers use digital wallets.

4. The Prepaid Rule's disclosure regime was tailored for the prepaid card industry, not for digital wallets.

In addition to the practical difficulties and confusion that would arise from applying the Prepaid Rule's disclosures to digital wallets, PayPal believes there is a conceptual problem. The disclosure regime is a fundamental departure from current Regulation E requirements. Current Regulation E is structured to apply to electronic fund transfers ("EFTs"), which is a discrete function that is utilized across diverse products and industries. The Prepaid Rule is structured similarly at a high level – the definition of "prepaid account" covers a few discrete functions that span different products and industries. However, the details of the disclosure regime are tailored to target fees and business practices that are specific to prepaid card issuers.

In some cases, PayPal believes it is appropriate to include very different products under a single regulatory framework. For example, current Regulation E can be applied broadly, because its specific requirements also are broadly applicable. Disclosures on unauthorized EFTs, error resolution, contact information, types of EFTs, limitations on EFTs, and applicable fees: these apply to EFTs across a broad range of products and industries, including account-based digital wallets like PayPal.

The Prepaid Rule's disclosures, however, are not structured this way. They are tailored to prepaid cards, requiring specific fee disclosures in a specific format, even though all "prepaid accounts" are required to comply with the rules. PayPal believes the Prepaid Rule's disclosure regime should be amended to apply only to prepaid cards.

[Continued on following page]

E. <u>If the Bureau decides to apply the Prepaid Rule to digital wallets, PayPal urges the Bureau at minimum to amend certain requirements of the Rule's pre-acquisition disclosure regime as described below.</u>

1. The Prepaid Rule should be amended to permit the pre-acquisition disclosures to be provided at any time before the prepaid account first holds a balance.

If the Bureau ultimately determines to apply pre-acquisition disclosures to digital wallets, PayPal urges the Bureau to amend the Rule's disclosure timing requirements to account for the differences between how consumers fund digital wallet accounts versus prepaid cards. Specifically, we urge the Bureau to amend its guidance in the Official Comments to the Prepaid Rule to permit pre-acquisition disclosures to be provided any time before the prepaid account first holds a balance, rather than before a consumer provides personal identifying information and agrees to accept the account.

The Official Comments to § 1005.18(b)(1) provide, in part:

> 2. *Disclosures provided electronically.* When the short form and long form disclosures required under § 1005.18(b)(2)(i) and (ii) are presented after a consumer has initiated a purchase for a prepaid account on a financial institution's Web site, but before a consumer provides any personal identifying information and agrees to accept the prepaid account, such disclosures are made pre-acquisition in accordance with § 1005.18(b)(1)(i).

This guidance refers to the "purchase" of a prepaid account and states that a disclosure can still be considered pre-acquisition if it is made after a consumer has initiated a "purchase," as long as the consumer has not provided any personal identifying information and agreed to accept the prepaid account.

For digital wallets, there is no "purchase" of a prepaid account. The closest equivalent is the point at which the digital wallet first stores the consumer's funds. However, on the first day that new customers set up a PayPal account, they cannot add funds themselves to their PayPal account balance.[4] New customers generally cannot send money or make a purchase with a PayPal account on Day 1 unless they link an access device for a payment card to the PayPal account.

In addition, digital wallets like PayPal have to collect certain information in order to open a consumer account. Prepaid cards, on the other hand, can be sold to consumers without prior registration.

These are critical differences: for prepaid cards, the purchase of the card and the opening of the prepaid account typically are accomplished in one transaction, and registration of the account occurs simultaneously or afterward (if at all). In this context, it makes sense to require pre-

[4] However, if a customer opens a PayPal account in order to accept funds that were sent to the customer by another PayPal user, then in some cases the customer may be able to access those funds when the account is opened. This rarely occurs.

acquisition disclosures to be provided before the purchase is complete, and before personal identifying information is collected and the account is agreed to. The underlying goal here is to ensure that consumers receive the disclosures before their funds become subject to the terms and conditions of the prepaid account. Further, one can assume that prepaid card purchasers intend to store funds in their prepaid accounts, so providing disclosures before they complete the purchase informs consumers up-front about what they are getting for their money.

However, digital wallets like PayPal do not require the consumer to hold a funds balance in order to transact. Few consumers store funds in their PayPal account for any significant period of time. Unlike prepaid cards, a PayPal customer could open and actively use a PayPal account for both P2P transfers and purchases from merchants without ever holding a balance of funds in the PayPal account.

Since the pre-acquisition disclosures relate to maintaining a balance, PayPal believes the Bureau's underlying policy goals can be accomplished by waiting to provide the disclosures until it becomes clear the consumer is about to obtain a funds balance. This would still ensure consumers receive the disclosures before any funds are held in their PayPal accounts.

Illustration of the Proposed Amendment

There are a number of ways that funds can be added to a consumer's PayPal balance. First, they can add funds by initiating a transfer from their linked accounts, typically a bank account. Second, they can receive P2P transfers from other users. Third, and much less common, in connection with a merchant dispute, funds from a merchant's account could be returned to the consumer's PayPal account.

In each of these scenarios, PayPal could identify when a consumer is first about to obtain a balance and could provide disclosures before the consumer's account is funded. This would accomplish the Bureau's goal of ensuring that consumers are made aware of the terms of their prepaid accounts before their funds become subject to those terms.

This change could also make the consumer more likely to understand the disclosures. If a consumer receives disclosures about maintaining a balance of funds when she first opens a PayPal account, she may not find that information relevant if she does not intend to maintain funds in her account. However, if the consumer is presented with disclosures at a time when funds are about to be transferred into her PayPal account, that is a more intuitive time to get information about maintaining a funds balance.

Impact on digital wallets

If PayPal is required to provide the proposed pre-acquisition disclosures before the consumer creates a PayPal account, we expect to see a major increase in potential customers abandoning the signup process. This is a more compelling problem for digital wallet providers than for traditional prepaid card issuers. When a consumer is shopping for prepaid cards on a rack in a physical retail store, and each has a disclosure, the consumer is less likely to be deterred from purchasing a card solely because the card is accompanied by a disclosure. On the other hand,

when consumers initiate the sign-up process for a PayPal account and see a disclosure describing fees and terms that aren't intuitively related to a digital wallet, they are likely to get confused.

PayPal has learned from much experience and testing that confusion at the sign-up phase massively increases the likelihood that the consumer will abandon the process. Some consumers may call our customer support number to ask questions, but many will simply never finish signing up.

Revision to Official Comment

For the foregoing reasons, PayPal urges the Bureau to revise the Official Comment to § 1005.18(b)(1). The comment should permit prepaid account providers to collect personal identifying information and obtain agreement to the account terms, before providing consumers with the disclosures, as long as the disclosures are provided prior to the first instance that funds are held in the prepaid account.

2. The Bureau should make certain amendments to Comment 18(b)(1)(i)-2.

If the Bureau determines to subject digital wallets to the Prepaid Rule and its disclosure regime, then PayPal urges the Bureau to make the following amendments to the Official Comments:

- Eliminate the phrase "on that same Web page" from Comment 18(b)(1)(i)-2, as described below in more detail.
- Permit mobile wallet providers to send consumers the long-form disclosure electronically after the account is opened (see below "The Bureau should amend the Prepaid Rule to exempt mobile wallets from certain pre-acquisition disclosure requirements"), but if the Bureau determines not to allow this, then at minimum, clarify that hyperlinks utilized under Comment 18(b)(1)(i)-2 are permitted to be used within mobile applications.
- Clarify that the phrase "a consumer must not have to review any unrelated links before viewing the long form disclosure" in Comment 18(b)(1)(i)-2 means that other links may be present along with the link to the long-form disclosure, as long as the disclosure link leads directly to the long-form disclosure, rather than leading to intermediate links that then take the consumer to the long-form disclosure.

Comment 18(b)(1)(i)-2 to the Prepaid Rule states the following (bolding added):

> A financial institution can present the short form and long form disclosures on the same Web page to fulfill the requirements of §1005.18(b)(1)(i). A financial institution could also present the short form disclosure on a Web page and include a hyperlink to the long form disclosure **on that same Web page**, but, if doing so, **a consumer must not have to review any unrelated links before viewing the long form disclosure**.

As an initial comment, PayPal is not certain how to interpret the phrase "on that same Web page." Interpreted literally, this might not allow the hyperlink to present the disclosure in a pop-up window, because a pop-up window might be interpreted as a different Web page. Moreover,

in some circumstances a separate Web page might present a disclosure more clearly than linking further down to a disclosure on the same Web page. PayPal does not believe that restricting the hyperlink from linking to pop-up windows and to separate web pages would necessarily make the disclosures less noticeable or clear. PayPal notes that Comment 18(b)(1)(i)-2 already contains a requirement that consumers cannot be permitted to "easily bypass" the disclosures, and we believe this could be sufficient to prevent circumvention of the disclosure regime.

In addition, PayPal believes that Comment 18(b)(1)(i)-2 does not contemplate the mobile wallet context. Mobile applications do not necessarily run on a "Web page." Interpreted literally, this Comment would permit hyperlinks for consumers who sign up for a PayPal account on a computer, but it is not clear hyperlinks would be permitted for those who sign up on a mobile device.

Finally, PayPal requests clarification that the phrase "a consumer must not have to review any unrelated links before viewing the long form disclosure" in Comment 18(b)(1)(i)-2 means that other links may be present along with the link to the long-form disclosure, as long as the disclosure link leads directly to the long-form disclosure, rather than leading to intermediate links that then take the consumer to the long-form disclosure. Digital wallets like PayPal have links to our legal agreements and privacy policies (among others) on nearly every Web page, and we do not think the Bureau intended to require us to remove such links just because a particular page also contains a link to the long-form disclosure.

In conclusion, PayPal notes that there are many considerations specific to digital wallets that are not necessarily contemplated by the Prepaid Rule, and we reiterate our argument that Regulation E can be applied to prepaid cards in a way that addresses the concerns of that industry, without grouping digital wallets with prepaid cards. However, if the Bureau determines to subject digital wallets to the Prepaid Rule and its disclosure regime, then PayPal urges the Bureau to make the amendments described above.

3. The Bureau should amend the Prepaid Rule to exempt mobile wallets from certain pre-acquisition disclosure requirements.

First, the Rule should be amended to exempt mobile wallets from the prescriptive font size and formatting rules of the disclosure regime, and require solely that the disclosure must be "substantially similar" to the model forms. Second, the Rule should permit mobile wallet providers to send consumers the long-form disclosure electronically after the account is opened.

The Bureau has already acknowledged that certain retail situations justify different rules for the disclosures. The Prepaid Rule includes exemptive relief in two contexts: accounts opened in physical retail stores, and accounts opened orally via telephone. PayPal believes the mobile context also poses unique challenges to the proposed disclosure regime, and that it should also receive exemptive relief. Mobile transactions, even more than other online transactions, experience significant abandonment rates if they face even minimal confusion or difficulty. This is an ongoing challenge for all participants in the mobile retail and payments space.

The Federal Trade Commission, for example, has acknowledged the unique challenges of requiring disclosures in the mobile context, as shown by its report "Mobile Privacy Disclosures: Building Trust Through Transparency."[5] PayPal urges the Bureau to conduct further research into the mobile wallet industry before imposing disclosure requirements on mobile wallet providers. Specifically, we believe the Prepaid Rule poses two problems in particular for mobile wallets: the font and formatting of the short-form disclosures, and the presentation of the long-form disclosure.

Font & Formatting of Short-Form Disclosure

The Prepaid Rule requires the short-form disclosure to comply with a number of prescriptive font and formatting requirements, including the mandatory use of 11 point font, 8 point font and 7 point font in different contexts. It also requires the short-form disclosure to be in a form "substantially similar" to the model forms proposed in the Rule.

In the context of mobile, these two requirements may work against each other. To be compliant, the short-form disclosure must include the minimum font sizes while simultaneously being substantially similar to the model forms. This could be interpreted to require minimum absolute dimensions for the short-form disclosure. In other words, prepaid account providers may not have flexibility to "shrink" or resize the disclosure to fit onto a mobile screen, because doing so would necessarily either reduce the font size (which is prohibited) or change the shape and relative placement of the data in the disclosure (which may cause it not to be "substantially similar" to the model forms).

The resulting user experience could be confusing and frustrating for consumers. On smaller mobile screens it would probably be impossible to view the entire disclosure at once unless the consumer first pinches the screen to zoom out to a wider view. Alternatively, the consumer would have to swipe the screen to scroll around and find the relevant information on the various parts of the disclosure. More likely, consumers would simply get frustrated and either abandon the sign-up process or scroll around until they figure out how to move to the next step, which distracts from reading the disclosure's content.

In conclusion, if the Bureau ultimately determines to apply disclosure requirements to digital wallets, PayPal urges the Bureau to amend the Prepaid Rule to exempt mobile wallets from the prescriptive font size and formatting rules, and require solely that the disclosure must be "substantially similar" to the model forms. This will ensure that the short-form disclosure can be presented in a user-friendly way on mobile screens.

Presentation of Long-Form Disclosure

In addition, PayPal urges the Bureau to permit mobile wallet providers to send consumers the long-form disclosure electronically after the account is opened. The same considerations apply to the mobile context as apply to physical retail stores and accounts opened via telephone: it would be impractical and unhelpful to consumers to have to review a large disclosure before opening their account. Mobile screens can be quite small. Even more than the short-form disclosures, the

[5] "Mobile Privacy Disclosures: Building Trust Through Transparency." FTC Staff Report (Feb 2013).

long-form disclosure's font size and formatting rules combined with the requirement to be "substantially similar" to the model forms would cause this lengthy disclosure to be unwieldy and difficult to navigate on a mobile device. In addition, mobile wallet providers like PayPal require e-mail addresses to open an account, which would enable us to e-mail the long-form disclosure after a consumer opens the account, and the consumer may be more likely to access the disclosure on a device with a larger screen.

F. Summary: PayPal urges the Bureau to provide certain relief for digital wallets under the Prepaid Rule's pre-acquisition Disclosure Regime.

PayPal does not dispute the Bureau's desire to apply Regulation E consumer protections to digital wallets, and in fact Regulation E already applies to PayPal accounts. We believe, however, that this should be done in a way that acknowledges the fundamental differences between prepaid cards and digital wallets. Both products can store a balance of funds, but only prepaid cards engage in the specific business practices that the Bureau seeks to target with the disclosure requirements in the Prepaid Rule.

PayPal does not believe consumers will be served by forcing digital wallets into sharing a consumer protection regulatory regime when consumers use the products so differently. The Prepaid Rule's disclosure requirements were designed to correct the business practices of prepaid card issuers, and applying the same rules to digital wallets will only confuse consumers and work against the Bureau's overarching policy goals. If the Bureau desires to address such business practices, we urge the Bureau to do so in a way that does not encompass products that consumers do not associate with prepaid cards and that do not contribute to the consumer harm that the Prepaid Rule seeks to address.

Alternatively, if the Bureau determines to include digital wallets within the definition of "prepaid account," PayPal urges the Bureau to amend the disclosure rules to apply only to prepaid cards. We do not believe consumers will be served by disclosures that conflict with their understanding of digital wallets.

If the Bureau ultimately determines to apply pre-acquisition disclosures to digital wallets, PayPal urges the Bureau to extend to digital wallet providers the exemptive relief described above.

G. The Bureau should exclude P2P products from the definition of "prepaid account."

Even if the Bureau determines to apply the Prepaid Rule to digital wallets generally, PayPal urges the Bureau to amend § 1005.2(b)(3)(i)(B) to carve out P2P offerings from the definition of "prepaid account."

PayPal believes P2P transactions are more similar to a "closed loop" payment system than to "open loop" general purpose reloadable prepaid cards. PayPal provides P2P transactions directly to the sender and recipient: a sender's funds are transmitted from the sender's PayPal account or bank account to the recipient's PayPal account. When a transfer to or from a bank account is involved, PayPal utilizes the ACH Network; however, the transaction is not processed by

intermediaries such as card networks, issuers or acquirers, except to the extent that a P2P payment is funded by a payment card linked to the PayPal wallet, which only occurs in a small fraction of PayPal's US P2P transactions. In addition, we would note that in the rare cases where a payment card is the funding source, consumers are protected by regulations that apply to the payment card funding the transaction.

The Prepaid Rule exempts gift cards from the definition of "prepaid account," and Regulation E generally does not apply to closed-loop payment products. PayPal believes subjecting P2P products to the Prepaid Rule would unfairly target these products. Further, PayPal is not aware of any consumer risk or harm particular to the P2P market that would justify this disparate treatment.

In addition, PayPal does not charge consumers fees to open an account, load an account, or to maintain an account. PayPal charges fees to consumers only in two narrow circumstances, and we disclose information about any fees before they are paid. First is a currency conversion spread that applies to multi-currency transactions (usually cross-border), and that is displayed to consumers before completing the transaction as part of the exchange rate that they pay. This fee applies to less than a quarter of PayPal's US consumer transactions. Second is a fee for consumers who fund a P2P transfer with a payment card which, as noted above, applies to only a small fraction of PayPal's US P2P transfers, because the majority of our consumers fund P2P transfers with a bank account or PayPal balance, and in such cases PayPal extends a discount that eliminates this fee.

For the foregoing reasons, PayPal urges the Bureau to amend § 1005.2(b)(3)(i)(B) as follows:

> (B) is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines~~, or usable for person-to-person transfers~~; and

H. Section 1005.15(d)(1) of the Prepaid Rule should be amended (1) to permit online access to a digital wallet account balance as an alternative to telephone access, and (2) to allow digital wallet providers to provide electronic access to written account histories, rather than sending them via mail.

Section 1005.15(d)(1) of the Prepaid Rule would allow financial institutions to either provide periodic statements (as currently required under Regulation E) or, alternatively, make available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 18 months; and (3) a written history of account transactions that covers at least 18 months upon request.

If the Bureau determines to apply the Prepaid Rule to digital wallets, we urge the Bureau to permit digital wallet providers to permit online access to the account balance, as an alternative to providing access via a readily available telephone line. In addition, PayPal currently provides electronic access to Regulation E account statements. PayPal urges the Bureau to clarify that digital wallet providers may provide the account histories required under § 1005.15(d)(1) in electronic format. Specifically, in order to protect consumers' financial data, digital wallet

providers should be permitted to notify consumers that the histories are available and provide a link consumers can use to access their PayPal account and securely view their account histories.

Consumers who use digital wallet providers like PayPal must have the means to electronically access their accounts, both to establish and to use the accounts on an ongoing basis. These consumers must provide an email address at sign-up and must use this address each time they log in to their account. PayPal uses email and other electronic communications as the primary way to provide information to consumers. We do not believe consumers wish to communicate via telephone for routine transactions such as checking their PayPal account balance, and we do not believe it is necessary to provide consumers with a physical copy of their written account history.

V. Conclusion

PayPal urges the Bureau to amend § 1005.2(b)(3) so that digital wallets are not considered "prepaid accounts" under the Rule, and in the alternative, to make other changes to the Rule consistent with the foregoing. We appreciate the Bureau's efforts to date. If you have any questions or would like to discuss the topics addressed in this letter, please do not hesitate to contact us.

Sincerely,

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