



March 23, 2015

ELECTRONIC SUBMISSION

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

Re: Request for Comment as to the Consumer Financial Protection Bureau's Proposed Rule, Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z), CFPB-2014-0031

Dear Ms. Jackson,

Google, Inc. ("Google") is pleased to offer comments on the Proposed Rule and Request for Public Comment ("Proposed Rule") regarding prepaid accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z) issued by the Consumer Financial Protection Bureau ("CFPB"). Google submits these comments to address issues in the Proposed Rules relating to digital wallets.¹

1. Digital wallets continue to evolve, and overregulation would unnecessarily stifle this emerging market.

Digital wallets are a powerful, innovative, and logical extension of the interconnected age. From shoe stores to farmers' markets, money and payment systems are becoming universally digitized, and mobile connectivity is becoming ubiquitous. Digital wallets harness these changes to permit users to unify their consumer economic lives in one place: consumers can hold coupons, store rewards cards, send money to friends or family, archive multiple payment credentials, and make payments to merchants online and in person without ever taking out a credit card. Digital wallets offer a highly-dynamic service in a world where all commerce—even bricks-and-mortar commerce—is united by the mobile Internet. Accordingly, digital wallets have the ability to provide consumers with a substantially simplified and more efficient experience of commerce, and can serve to reach consumers with limited access to traditional banking options.

The evolution and use of digital wallets will expand dramatically in the coming years. Today, however, the development and adoption of this technology is still in its infancy. Uptake is growing, and digital wallets give both sophisticated and tech-savvy users and traditionally

¹ Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 79 Fed. Reg. 77710 (proposed Dec. 23, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-27286.pdf> ("Prepaid Accounts NPR").

underbanked users greater options to control their financial lives. This rapid evolution and potentially broad customer base means digital wallets are very differently situated from the traditional prepaid products that this rulemaking primarily focuses on. Traditional prepaid accounts are generally static, and have achieved mass-market penetration. On the other hand, digital wallet technology changes almost daily,² and digital wallets are not yet ubiquitous.

The fact that digital wallets are still very much an emerging product means that they presently pose minimal risk to consumers. Therefore, there is little need for heavy-handed regulation of these products. Instead, heavy regulation would risk inadvertently stunting the continuing development of digital wallets, which could have a deleterious impact on the broad range of consumers that would otherwise benefit from such innovation. Thus, we request that the CFPB tread lightly in regulating digital wallets.

We also recommend that the CFPB remain open to methods of compliance with applicable rules that take into account the platforms on which digital wallets exist. For example, many digital wallets are used primarily or exclusively on users' smart phones. The CFPB's rules should recognize such differences and contemplate compliance with disclosure requirements on alternative platforms.

Ultimately, the CFPB will best serve consumers' interests by acting slowly with respect to digital wallets, and remaining sensitive to the uniqueness of digital wallets as compared to traditional prepaid products.

2. Store gift cards and virtual marketplace gift cards should be excluded from the proposed rule.

Google supports the CFPB's proposed exemption of store gift cards from the new rule. We share the sentiments of commenters to the Prepaid ANPR, who expressed concern that many Regulation E provisions would be difficult to apply to gift cards, and who believe that the consumer risk posed by store gift cards is substantially lower than risks posed by traditional prepaid cards.³ The Proposed Rule correctly treats these products as unique from other prepaid products.

3. The CFPB should clarify that otherwise non-covered features of digital wallets will not be subject to the rules simply because they are packaged with covered features.

We urge the CFPB to clarify that a company that offers a multi-feature digital wallet will be covered under Regulation E only with respect to the feature within the digital wallet used to

² *Id.* (Indeed, as the CFPB has recognized, there are "significant variations in how funds are held in digital wallets and how payments are processed by digital wallets and [] payment processing by digital wallets is evolving quickly.").

³ Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 30923 (proposed May 24, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-24/pdf/2012-12565.pdf> ("Prepaid ANPR").

store funds. This is consistent with the CFPB’s position that consumer protection regulations should be carefully targeted to apply only where there is actually a need for regulation.⁴

Many digital wallets today offer a wide range of features, including gift card functionality and credential storing, which are plainly excluded from the scope of the rule. Digital wallets of the future are likely to offer even more enhanced features and functionalities. Indeed, the CFPB has itself acknowledged that there is an “increasing number of mobile financial products, each with different features, capabilities, and consumer protections,”⁵ and that “[d]etermining how this proposed rule might apply to those products may be difficult in light of the quick evolution of these products and their features.”⁶

We presume that the CFPB does not intend to include otherwise-excluded functionality in the scope of the rule simply because that functionality is packaged with a covered prepaid product. Nevertheless we draw the CFPB’s attention to the issue because it is essential to promoting further innovation. We oppose any rule that would extend regulation to wallet functionality that would not be covered if offered on a stand-alone basis—such a rule would likely lead to artificial and harmful separation of functionality that is more useful as an integrated whole, and in turn needlessly harm consumers.

4. Digital Wallets that only hold credentials for payment but do not store funds should be excluded from the rule.

Google supports the CFPB’s current proposal to exclude digital wallets that hold payment credentials but do not themselves store any value for customers.⁷ We agree with the CFPB’s conclusion that, to the extent that the credentials loaded into a digital wallet are for other accounts that are protected by Regulations E or Z, those products should provide consumers with sufficient protections without direct regulation of the wallets themselves.⁸

⁴ See, e.g., Consumer Financial Protection Bureau Strategic Plan FY 2013–FY 2017 at 26, available at <http://files.consumerfinance.gov/f/strategic-plan.pdf> (“Outcome 3.2: Articulate a research-driven, evidence-based perspective on consumer financial markets, consumer behavior, and regulations to inform the public discourse, inform Bureau thinking on priority areas, identify areas where Bureau intervention may improve market outcomes, and support efforts to reduce outdated, unnecessary, or unduly burdensome regulations.”).

⁵ Prepaid Accounts NPR, 79 Fed. Reg. at 77133.

⁶ *Id.*

⁷ *Id.* (“A prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance. This does not include a product that can never store funds, such as a digital wallet that only holds payment credentials for other accounts.” Prepaid Accounts NPR, 79 Fed. Reg. at 77129. “With these examples, the Bureau seeks to make clear that it does not intend to extend the proposed definition of prepaid account to a product that can never store funds. To the extent that a digital wallet, for example, merely stores payment credentials (e.g., a consumer’s bank account or payment card information), rather than storing the funds themselves, the digital wallet would not be considered a prepaid account under the proposed rule.”).

⁸ *Id.* (“Specifically, proposed comment 2(b)(3)(i)–4 would explain that a prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance. This does not

5. Digital wallets that facilitate person-to-person transfers of funds but do not store funds should also be excluded from the scope of the rule.

Some digital wallets do not themselves store any funds, but nevertheless allow a user to access funds held elsewhere—such as funds held in a bank account—and send them to other users of the digital wallet system. The recipient generally then “claims” those funds, and they are transferred to an account held by the recipient outside of the digital wallet system (such as the recipient’s bank account). In many respects, this functionality is akin to a wallet that merely holds payment credentials, as the wallet itself does no more than facilitate a transfer between third party accounts. In both scenarios, the digital wallet does not actually hold consumer funds in any meaningful sense.

The proposed rule appears to exclude this type of digital wallet because it is not “capable of being loaded with funds.” Nevertheless, additional clarification would benefit market participants. Specifically, wallets functioning as described above may, for example, temporarily hold funds in an omnibus account between the time that funds are “sent” and “claimed.” During that time, neither the sender nor the recipient can access such funds for purchases. The CFPB should clarify that this arrangement or similar arrangements would not render such a wallet subject to the proposed rule.⁹

6. Digital wallets used for person-to-person transfers of funds should be excluded from the rules *even when they hold users’ funds.*

Finally, we recommend that the CFPB go farther than merely addressing wallets that do not hold consumer funds, and exclude *all* person-to-person wallet functionality from the scope of the rules, regardless of whether the wallet holds users’ funds.

Person-to-person transfers of funds are different in kind from traditional shopping payments or bill payment transfers. They generally involve parties who already know each other, and they take place within a network of people that use the same wallet system. Some typical examples of these types of transactions include settling rent and utilities bills among roommates, or paying a family member for a share of the summer vacation rental. These products do not replace credit or debit cards, and generally are not usable or practical for transactions with traditional merchants. Further, as these transactions take place within a common network, the risks posed to consumers in this context are lower than any risks associated with prepaid debit cards or similar traditional prepaid products.

Regulating these still evolving products like credit or debit cards makes little sense and could negatively impact innovation and growth of these products. Much as store gift cards should be exempt from the rule because they are different from traditional prepaid products, so too should person-to-person wallet functionality be exempt. Heavy regulation of these products risks

include a product that can never store funds, such as digital wallet that only holds payment credentials for other accounts.”).

⁹ See *id.* (“However, if a product allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product satisfies § 1005.2(b)(3)(i)(A).”).

needlessly marginalizing a very practical product that has filled a hole in consumer services—one that hasn't seen substantial innovation since the advent of the mailed check.

We look forward to working with CFPB as it explores opportunities to ensure consumers are protected when they use prepaid accounts. Please contact the undersigned if there is any additional information that we can provide to you.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "A. T. Biddings". The signature is fluid and cursive, with a large initial "A" and "T" and a stylized "Biddings".

Adrienne T. Biddings
Policy Counsel