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NETSPEND

May 28, 2020

Via E-Mail at: ***2020-RFI-Taskforce@cfpb.gov***

Comment Intake
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

RE: Consumer Financial Protection Bureau Notice and Request for Information
Docket No. CFPB-2020-0013

Ladies and Gentlemen:

NetSpend Corporation, a Global Payments company ("NetSpend"), is pleased to provide this letter in response to the Consumer Financial Protection Bureau ("Bureau") request for information published in the federal register on April 1, 2020 ("RFI"). The RFI seeks information on various aspects of financial products and services in order to assist the Bureau's Taskforce on Federal Consumer Financial Law (the "Taskforce") with developing recommendations to modernize and identify gaps with federal consumer financial laws. Specifically, NetSpend provides comments on several provisions of the Bureau's final rule governing Prepaid Accounts ("Prepaid Rule") under the Electronic Fund Transfer Act ("EFTA," as implemented by Regulation E) and the Truth in Lending Act ("TILA," as implemented by Regulation Z) and on the shifting landscape for consumer privacy. NetSpend appreciates the opportunity to provide comment on some of the unnecessarily burdensome aspects of the Prepaid Rule and supports the Bureau's efforts to identify and reduce such burden. This letter also will address aspects of the Prepaid Rule that deny consumer choice in financial services.

NetSpend is a leading provider of prepaid card products that serve a wide variety of consumers, including unbanked and underbanked consumers in the United States who do not have traditional bank accounts and who often rely on alternative financial services. NetSpend is a leader in providing consumers with innovative and affordable financial products that meet their financial needs. Specifically, NetSpend acts as a program manager for bank-issued prepaid cards and deposit account products marketed to consumers through the Internet, direct marketing, and retail outlets. NetSpend also serves as a program manager for financial institutions that provide payroll cards (or, paycards) through employers. NetSpend's products have a wide variety of fee plans and options, designed to provide consumers with flexibility, choice, and value at an affordable price. As of March 31, 2020, NetSpend managed approximately 4.9 million active cards.

Responses to Questions Posed in the RFI

I. Expanding Access: Questions exploring potential obstacles to financial inclusion

1. *Millions of U.S. households lack a bank account. Should the Bureau promote greater access to banking services and, if so, how? Are alternatives to deposit accounts, such as prepaid cards and peer-to-peer electronic payments, sufficient when compared to traditional banking products? What is the evidence regarding consumers' understanding of, and experience and satisfaction with, these products?*
4. *There is consumer demand for short-term, small-dollar credit. What impediments exist for expanding access to short-term, small-dollar loans and ensuring that this market is fair, transparent, and competitive? What has been the impact of State and Federal efforts to regulate such credit? Is the annual percentage rate a meaningful measure for a very short-term loan? If not, what other measures might be more useful to help consumers in understanding and assessing the cost of short-term credit?*

Response: NetSpend has long championed financial inclusion and designed financial products to increase access to today's economy. As a leader in the prepaid card market, NetSpend has found that for many consumers, prepaid products meet their financial needs and make it possible to participate in the modern "cashless" economy. Specifically, many consumers use prepaid cards in the same way in which others use debit cards that access a deposit account, including to access the electronic payment system, shop on the Internet and pay for travel-related services, such as rental cars, airline tickets and hotel accommodations, that otherwise might require a credit card or other type of debit card. Many consumers also choose to use prepaid cards because they want to avoid or limit fees that may be associated with other types of financial accounts, including traditional deposit accounts, or because they simply prefer a prepaid financial product that offers the product features that are offered with the prepaid card. Finally, some consumers choose these products because of onerous eligibility requirements associated with comparable banking products in market, such as high minimum initial balance requirements, required minimum daily balances, and consumer reporting agency (e.g., Chexsystems or EWS) and related checks at account opening, which are generally less favorable to the unbanked and underbanked communities.

In NetSpend's view, the Bureau could promote greater access to banking services, address consumer demand for short-term liquidity, and level a disparity in the market by withdrawing the provisions of the Prepaid Rule that regulate prepaid account overdraft features as "hybrid prepaid-credit cards." **As will be more thoroughly addressed below, we strongly urge the Bureau to withdraw the "hybrid prepaid-credit cards" provisions of the Prepaid Rule because these provisions are not based on evidence of consumer harm, are overly burdensome, and deny prepaid cardholders equal access to financial services.**

The hybrid prepaid-credit card ("Hybrid Card") provisions of the Prepaid Rule effectively eliminated overdraft features from the prepaid card market. This change has denied consumers access to short-term liquidity, which is a benefit that many of them highly value, and has imposed unnecessary regulatory burden without evidence of consumer harm. Moreover, the Hybrid Card provisions have created an uneven playing field among financial services providers and caused consumer confusion. For these reasons, NetSpend believes that the Bureau should withdraw the Hybrid Card provisions of the Prepaid Rule, and regulate overdraft on prepaid cards in a manner consistent with the way in which the Bureau regulates overdraft features on other consumer asset accounts, including traditional bank accounts.

Like traditional bank accounts, consumers may use overdraft features of prepaid cards to meet short-term liquidity needs. These needs are exacerbated during an economic downturn or crisis. While some consumers have options for making purchases when liquidity events occur (e.g., using a credit card; drawing on funds in a savings account; obtaining payday loans, home equity loans, or car title based loans; borrowing from relatives, friends or employers; or accessing deposit account overdraft features), these options are not available to all consumers. In fact, when faced with an unexpected expense of just $400, "27 percent [of Americans] would borrow or sell something to pay for the expense, and 12 percent would not be able to cover the expense at all."[1] For unbanked and underbanked consumers, overdraft features on prepaid cards can provide much needed short-term liquidity.

Prior to the Bureaus's adoption of the Prepaid Rule, a significant number of NetSpend's prepaid cardholders relied on the overdraft feature associated with their prepaid cards to help them address occasional short-term liquidity needs, just as a significant number of traditional debit cardholders rely on the overdraft feature of their deposit accounts from time to time. In both cases, informed consumer choice drives the election to receive overdraft services: Consumers know what they are choosing and are not deceived. Specifically, the prepaid programs managed by NetSpend that previously offered an overdraft feature required that eligible prepaid cardholders "opt in" before an overdraft was paid. Prior to opting in, consumers received disclosures about the terms and conditions of the overdraft service. A consumer was not charged a fee for an overdraft unless the consumer affirmatively requested that overdrafts be paid on his or her behalf after the consumer had the opportunity to evaluate any fees that may result from that service.[2] Moreover, as discussed below, NetSpend adopted policies to protect consumers from excessive overdraft fees, and, as a result, approximately 60 percent of the overdraft transactions on NetSpend's prepaid cards did not incur a fee.

[1] Board of Governors of the Federal Reserve, Report on the Economic Well-Being of U.S. Households in 2018, May 2019, available at https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

[2] In general, under the terms of issuers' prepaid card agreements, the issuer does not agree to pay any overdrafts that a consumer may incur. That is, even if a consumer "opts in" to an overdraft service under the issuer's contract with the consumer, a consumer does not have a "right" to incur overdrafts. We understand that this is the same approach used in contracts of financial institutions in connection with debit cards and deposit accounts.

There is no evidence of consumer harm resulting from overdraft protection on prepaid cards.

The Bureau adopted a rule that effectively eliminated a feature on prepaid cards that many consumers demanded and used effectively without supporting data or a persuasive rationale. In the course of its rulemaking, the Bureau had direct access to complaints filed with the Bureau concerning a wide variety of consumer financial products, including complaints about prepaid overdraft.[3] To date, prepaid account products make up far less than 1% of the consumer complaints the Bureau has received and prepaid overdraft complaints comprise only one half of one percent of those complaints.[4] The overwhelming majority of consumer complaints continue to concern to debt collection, credit reporting, mortgages or bank accounts.

Moreover, in response to the Bureau's request for comment on the prepaid accounts proposed rule,[5] nearly 6,000 consumers submitted comments to the Bureau on the effect that the overdraft provisions of the proposed rule would have on their lives.[6] Sample comments included:

> "The overdraft protection has been very helpful to me and my mother. We have fallen on hard times before and with the overdraft protection we have been able to get through difficult situations that come up until we get in our feet." – Submitter: Brittni Williams
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> "Without overdraft protection I would be lost because I depend on that protection to get me through hard times. When I run a little short, the protection is always there to give that support and that's always good to have a feature of this caliber. Thanks netspend for providing this feature to your customers for a number of years." – Submitter: Lorraine Sardin
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> "The card I have has been the best card for my needs if I go over its usually for medication that the medicad program won't cover. I depend on this every month...the other cards don't help people they put u in debt. I love net spend. please don't change it." – Submitter: Mary Miller
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> "The ability to overdraft my netspend card is the difference I eating at the end of the month or not." – Submitter: Randy Hutchins

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[3] Complaints about prepaid overdraft were aggregated with complaints related to prepaid savings features and prepaid rewards features.

[4] *See* Bureau Monthly Complaint Report, Vol. 16, at 11 (Oct. 2016), available at https://files.consumerfinance.gov/f/documents/102016_cfpb_Monthly_Complaint_Report.pdf. Similarly, according to a March 2016 report from the Bureau, only 1 percent of all prepaid complaints concerned "overdraft, savings or rewards features." *See* Bureau Monthly Complaint Report, Vol. 8, at 12 (March 2016), available at https://files.consumerfinance.gov/f/201603_cfpb_monthly-complaint-report-vol-8.pdf.

[5] 79 Fed. Reg. 77,102 (Dec. 23, 2014).

[6] NetSpend customer comments represented 92% of all posted comments. *See* https://www.regulations.gov/document?D=CFPB-2014-0031-0001.

"I am a single parent and sometime when we are at the grocery store we tend to run short or kids need something for school. So that is when I use my overdraft. *Please consider our comments with being a netspend customer.*" – Submitter: Lavora Moses

"As a single mom supporting two young girls, this overdraft protection has allowed me to buy milk or diapers when I was down to nothing in my account." – Submitter: Bethany Plainsboro

For these consumers, and the millions of other consumers that opted in, the overdraft features on prepaid cards were the preferred way to meet short-term liquidity needs, in particular during an economic downturn or crisis. Although the Bureau has long committed to being "data driven",[7] in the course of its rulemaking, the Bureau appears to have marginalized data that was inconsistent with its decision to effectively eliminate this option, ignored consumer support for the overdraft feature, failed to identify any relevant consumer harms, and substituted its judgment for that of the prepaid card consumer that opted in to the overdraft feature. For example, the Bureau dismissed concerns about the lack of consumer complaints on the basis that "relatively few consumers use overdraft services in connection with their prepaid accounts, [and therefore] the Bureau does not consider the volume of complaints to be informative regarding the benefits and costs of the final rule's treatment of overdraft services as credit."

Faced with a lack of data evidencing consumer harm, the Bureau cited a 2015 survey conducted by The Pew Charitable Trusts when concluding that "most [general purpose reloadable, or] GPR prepaid card users would rather have a purchase denied than overdraft their accounts and incur an overdraft fee."[8] Thus, the Bureau's estimation of consumer preference—and not any perceived consumer harm—ultimately became the touchstone for the overdraft aspects of the Bureau's rulemaking. However, the Bureau's reliance on the Pew survey was misplaced, and the survey failed to consider fully that the overdraft feature

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[7] Former Director Cordray consistently stated that he intended for the Bureau's decision-making to be based on data. *See, e.g.*, https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-on-project-catalyst-stimulating-innovation-in-financial-products-and-services/ (stating, "[A]mong our foundational principles is that we are a data-driven agency." (Nov. 14, 2012)); https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-director-richard-cordray-at-the-national-community-reinvestment-coalition-annual-conference/ (stating, "We are a data-driven agency and we try to take our bearings from the facts as we can best make them out . . .." (Mar. 22, 2013)); https://files.consumerfinance.gov/f/201602_cfpb_report_strategic-plan-budget-and-performance-plan_FY2016.pdf (stating, "The CFPB is a data-driven agency. . . . Our aim is to use data purposefully, to analyze and distill data to enable informed decision-making in all internal and external functions." (Feb. 2016)); https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-money-2020/ (stating, "We are committed to being data-driven . . .." (Oct. 23, 2016)); https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-lendit-usa-conference/ (stating, "As a self-described 'data-driven agency,' naturally the Consumer Bureau has dug into the data to gain a deeper understanding." (Mar. 6, 2017)).

[8] 81 Fed. Reg. at 83,938. *See also* The Pew Charitable Trusts, Banking on Prepaid: Survey of Motivations and Views of Prepaid Card Users, at 10–12 (June 2015), available at http://www.pewtrusts.org/~/media/assets/2015/06/bankingonprepaidreport.pdf.

required an opt in, which allowed consumers that preferred to have a purchase denied, rather than overdrafting their account, to make that choice.[9] Instead, those consumers who chose to incur an overdraft fee rather than have a purchase denied had that opportunity usurped by the Prepaid Rule. Moreover, the Bureau acknowledged, as discussed herein, that the prepaid programs that previously offered an overdraft feature "appear[ed] less expensive as well as more consumer friendly in other respects than their checking account analogs."[10]

The supplementary information issued with the Prepaid Rule ("Supplementary Information") suggests that the approximately 5,000 individual comments that consumers submitted regarding their experience with overdraft services were not given due consideration or weight by the Bureau when it effectively eliminated the overdraft feature. The Bureau notes that the individual consumer comments (i.e., not the "form comments," which were actually just signatures on a consumer advocacy group petition) generally supported the availability of overdraft services,[11] and that "overdraft services allowed them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs."[12] However, the Bureau made no effort to address the concerns about losing access to this source of liquidity expressed by these consumers. Moreover, the Bureau did not appear to consider the harm to these consumers if the Bureau moved forward with this aspect of the Proposed Rule. NetSpend respectfully requests that the Bureau revisit these comments filed by these individual consumers as the Taskforce looks for ways to level the playing field in financial services and expand access to banking services.

There simply is no evidence that consumers are harmed by overdraft features on prepaid cards. Similar to overdraft services for consumers who use debit cards that access funds in a deposit account, as discussed further below, consumers that opt in to overdraft features want the ability to complete transactions despite the fact that the associated debit to their account will cause a temporary overdraft. That is, prepaid cardholders may prefer that a utility payment be made even if a $15 overdraft fee is assessed rather than incur a late payment fee imposed by the utility company or face having their utility service temporarily suspended, which could involve a service reinstatement fee. Consumers, and particularly unbanked and underbanked consumers, should be afforded this option.

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[9] Moreover, the survey results were far more nuanced that the Bureau's statement would indicate. In fact, according to the 2015 survey, 29% of unbanked consumers indicated a willingness to pay a $15 overdraft fee in lieu of declining a transaction. *See* Pew survey at 11.

[10] 81 Fed. Reg. at 83944.

[11] *Id.* at 83957. The Bureau appeared to give equal weight to approximately "56,000 <u>form comments</u> . . . submitted by individual consumers as part of a comment submission campaign organized by a national consumer advocacy group, generally in support of the proposal—particularly related to limited liability and the requirement to assess consumers' ability to pay before offering credit attached to prepaid cards." *Id.* (emphasis added).

[12] *Id.* at 84156.

Recognizing the value of overdraft services to consumers and a perceived risk of misuse of such services, as a leader in the prepaid card space, NetSpend implemented numerous measures to help consumers use this feature responsibly:

- Consumers had the opportunity to "cure" any overdraft within 24 hours, thereby avoiding any overdraft fee;
- Any overdraft of $10 or less on a GPR card account or $5 or less on a payroll card account incurred no fee (i.e., a purchase cushion);[13]
- Overdraft fees were capped at three per month for GPR card users and five per month for payroll card users;
- Overdraft fees were waived when the consumer's balance was positive at authorization even if it settled negative or if the balance was negative at authorization, but settled positive;
- Consumers' use of overdraft services was monitored and temporarily suspended if NetSpend's data indicated that the consumer was incurring excessive overdraft fees; and
- When consumers did incur an overdraft fee, the fee was $15 per occurrence for GPR cards and $25 per occurrence for payroll cards. <u>A $15 overdraft fee is half of the median amount charged by banks for overdrafts on traditional deposit accounts</u>.[14]

These policies produced exceptional benefits for consumers. For example, in 2017, <u>approximately 60 percent of the overdraft transactions on NetSpend's prepaid cards did not incur a fee</u>. Despite the obvious consumer benefits of enabling issuers to offer an optional, voluntary overdraft service with a prepaid card, for the reasons discussed below, the Prepaid Rule eliminated this optional source of short-term liquidity for consumers. The loss of this service forced consumers who, like the consumers whose comments are excerpted above, have a short-term cash shortfall to seek alternative financial services that may have significantly higher costs and potential for abuse.

The Hybrid Card provisions of the Prepaid Rule are overly burdensome and effectively eliminated the overdraft feature from the prepaid market.

As noted above, the Bureau received compelling evidence of consumer demand and virtually no evidence of consumer harm. Nonetheless, the Bureau devoted substantial government resources to creating a complex regulatory framework that effectively eliminated consumers' access to opt-in overdraft protection. Specifically, the Prepaid Rule subject Hybrid Cards to requirements that, in some respects, exceed the Regulation Z protections applicable to traditional credit card accounts. For example, under the Prepaid Rule holders of prepaid cards must wait 30

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[13] This practice remains permissible under the Prepaid Rule. *See* Prepaid Rule § 1026.61(a)(4).

[14] *See* Moebs Services, Inc. "The Facts Behind Why Consumers Hate Overdrafts" (Mar. 14, 2017), available at http://www.moebs.com/news/ctl/details/mid/484/itemid/1450 (also noting that an overdraft "price less than $20 was not controversial [in 2000] and it is not today").

days after they register their cards before they are eligible for overdraft services.[15] Traditional credit and debit cardholders have no such "waiting time" restrictions. The introduction of a "waiting time" for access to an overdraft feature risks causing confusion for consumers who acquire a particular prepaid card with the intent to have access to overdraft protection.

The Hybrid Card approach envisioned by the Prepaid Rule has several burdensome aspects that will effectively eliminate the availability of overdraft features on NetSpend prepaid cards. For instance:

- Conducting ability-to-pay analyses for Hybrid Cards is unworkable. Under the rules implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act"), credit card issuers are required to consider a consumer's ability to make the required payments before opening a credit card account or increasing the credit limit of an existing account.[16] Card issuers must base this consideration on the consumer's income, assets and current debt obligations. This approach is antithetical to one of the fundamental tenets of the prepaid card industry: consumers do not have to complete a credit check or pass any kind of financial screening service (such as ChexSytems) prior to opening an account. Not only does NetSpend not have the infrastructure available to make ability-to-pay determinations, requesting the required information likely would result in substantial consumer confusion and resistance.
- The Hybrid Card provisions will drive up default rates, making overdraft features uneconomical. Under the rules implementing the CARD Act, a card issuer may not take any action to offset a cardholder's indebtedness arising from a consumer credit transaction against funds of the cardholder held on deposit with the card issuer.[17] As a result, any overdrafts cannot be automatically repaid the next time the consumer loads funds onto the asset feature of their card. Moreover, the Prepaid Rule permits issuers to deduct all or part of a cardholder's overdraft debt automatically from their prepaid asset account no more frequently than once per month pursuant to a written authorization signed by the cardholder, and it requires that consumers have at least 21 days to repay the debt incurred in accessing the overdraft feature.[18] Issuers are not permitted to require consumers to set up preauthorized electronic transfers to repay an overdraft as a condition to the creation of the overdraft feature.[19] Note that consumers have the right to cancel any preauthorized payment authorizations.[20] Again, these provisions would operate to significantly drive up default rates.

[15] 12 C.F.R. § 1026.61(c)(1).

[16] *Id.* § 1026.51.

[17] *Id.* § 1026.12(d)(1).

[18] *Id.* § 1026.5(b)(2)(ii)(A)(*1*).

[19] *Id.* § 1005.10(e)(1).

[20] *Id.* § 1005.10(c)(1).

- CARD Act restrictions do not contemplate short-term liquidity products like overdraft features. For example, the rules implementing the CARD Act restrict the fees that can be billed during the first year after a credit account is opened to 25 percent of the applicable credit limit.[21] Given that the amount of any credit extended in connection with an overdraft feature associated with a prepaid card will be relatively low, this restriction makes it virtually impossible to craft an overdraft program that provides an appropriate level of return to the card issuer to justify the risk of the credit extension, particularly given the enhanced default rates that will be driven by the Prepaid Rule.

- Other provisions of TILA and Regulation Z are unworkable in the context of an overdraft feature. For example, Regulation Z requires issuers to mail periodic statements at least 21 days prior to the due date applicable to any payments.[22] In addition to imposing the costs associated with mailing periodic statements on Hybrid Card issuers, this requirement will delay repayments of any overdrafts and further increase the risk to the issuer that the overdraft will not ultimately be repaid.

The Hybrid Card provisions of the Prepaid Rule make it operationally, practically and economically impossible to implement an overdraft feature in the prepaid card context. As a result, the Bureau's rule denies consumers access to a short-term liquidity sources available to nearly every traditional deposit account holder. Based on the Hybrid Card provisions of the Prepaid Rule, the overdraft features of all of the prepaid card programs managed by NetSpend have been terminated.

Prepaid cardholders should have equal access to features as consumers of like products.

In 2009, the Federal Reserve Board adopted a final rule under Regulation E that limits a financial institution's ability to assess fees for paying ATM and one-time debit card transactions pursuant to the institution's discretionary overdraft service.[23] Before a fee can be assessed for an overdraft, a consumer must affirmatively consent to the payment of such overdrafts.[24] In addition, detailed disclosures about overdrafts and the opt-in right must be provided to the consumer, and the consumer's written affirmative consent must be obtained, before fees or charges may be assessed on the consumer's account for paying such overdrafts.[25]

It would have been relatively efficient and straightforward for the Bureau, in the course of the prepaid accounts rulemaking, to extend the existing opt-in and informational requirements of

[21] *Id.* § 1026.52.

[22] *Id.* § 1026.5(b)(2)(ii)(A)(*1*).

[23] 74 *Fed. Reg.* 59,033 (Nov. 17, 2009) (codified at 12 C.F.R. § 1005.17).

[24] 12 C.F.R. § 1005.17(b). *See also* 12 C.F.R. § 1030.11 (requiring any depository institutions, not solely institutions that promote the payment of overdrafts, to disclose aggregate overdraft fees on periodic statements).

[25] 12 C.F.R. § 1005.17(d).

Regulation E (12 C.F.R. § 1005.17) to overdraft features associated with prepaid accounts. This approach would have—far more efficiently—imposed comparable protections on products that serve as alternatives. Instead, the Bureau drafted thousands of pages of complex provisions to effectively eliminate overdraft features on prepaid cards, subjecting prepaid cards to far more burdensome regulatory treatment than an equivalent financial product.

NetSpend strongly believes that consumers should have choices when deciding which financial products and services they want and that similar products should receive comparable regulatory treatment. Overdraft services offered by banks and credit unions on ATM cards and debit cards accessing a customer's deposit account are not treated as the offering of loans or extensions of credit subject to the requirements of Regulation Z. Yet, this is precisely the approach the Prepaid Rule takes for overdrafts on prepaid accounts. Rather than effectively prohibiting prepaid card issuers from offering overdraft services by treating such transactions as an extension of credit, as the Prepaid Rule does, a Regulation E opt-in approach to an optional, discretionary overdraft service on prepaid cards should instead be adopted. Such an approach would ensure that prepaid card issuers have the opportunity to operate on a level playing field with other financial services providers that offer overdraft services in connection with their debit products. More importantly, under an opt-in approach consumers of prepaid cards would receive comparable benefits relating to overdrafts as debit card holders.

II. Improving Consumer Protection: Questions exploring the overall performance of consumer protection.

> *19. Which markets for consumer financial products or services are functioning well—that is, which markets are fair, transparent, and competitive? Which markets might benefit from regulatory changes that could facilitate competition and materially increase consumer welfare?*
>
> *20. What types of disclosures regarding consumer financial products or services are effective and what types are not? Could the content, timing, or other aspects of disclosures be improved and, if so, how?*

Response: In addition to its objections regarding the effective elimination of overdraft features for prepaid cards, NetSpend appreciates the opportunity to identify for the Bureau other opportunities to clarify the disclosure requirements and other consumer protections afforded by the Prepaid Rule to benefit consumers and reduce burden for industry. In particular, NetSpend acknowledges the importance of a short form fee disclosure requirement, but these disclosures are overly prescriptive and can, in some cases, be misleading and could easily be improved.

The short form periodic fee disclosures are not sufficiently informative and could easily be improved.

Section 18(b)(3)(ii) of the Prepaid Rule provides that if the amount of a periodic (*i.e.*, monthly) fee disclosed pursuant to Section 18(b)(2)(i) of that Rule may vary, the financial institution should disclose the highest periodic fee in the fee table followed by a symbol (such as a dagger) to indicate that a lower fee might apply in some circumstances. The symbol can be linked to a statement disclosing the waiver or reduced fee amount and explaining the circumstances under which the fee waiver or reduction may apply; however, the statement is limited to one line of text.[26] In certain cases, it is not possible to adequately explain the circumstances under which the consumer can qualify for the lower periodic fee.

For example, NetSpend manages numerous programs that have a two-tier monthly fee structure. Generally, these include a monthly plan where the fee is $X, but there is a reduced fee if the consumer electronically deposits at least $Y of payroll or government benefits in any one month. The corresponding short form lists the monthly fee as $X per mo.† and the symbol directs the reader to the following statement:

† $Z/mo. w/ payroll/benefits direct deposits totaling at least $Y in 1 calendar month.

To be more useful to the consumer, the amount of the reduced monthly plan should be given equal prominence in the fee table, as follows:

	Pay-as-you-go Plan	**Monthly Plan**
Plan fee	$0	$X/$Z per mo.†

The symbol would then be linked to a statement such as the following:

† The reduced monthly fee is available if you receive at least $Y in direct deposits of payroll checks or government benefits in any one calendar month.

The additional requested revisions to the short form described below would create the space needed for the additional line of text.

The required disclosure regarding additional fee types is misleading and not informative.

Section 18(b)(2)(viii) of the Prepaid Rule requires issuers to disclose the number of additional fee types they charge with respect to a given program. There are several issues associated with this disclosure. First, it may lead consumers to believe that a program that offers a larger number of optional features is more expensive than a program that offers less flexibility, when this may not, in fact, be the case. Second, the number of fee types may not be comparable across prepaid programs because the number of fee types is dependent upon the manner in which the fees are grouped in the long form (there is no prescribed methodology). In effect, the number of additional fee types shown on the short form can be manipulated simply by grouping the long form fees into relatively few fee types. Requiring issuers to make the disclosure regarding the number of additional fee types also results in issuers eliminating innovative additional services that consumers may find useful in order to reduce the number of fee types listed on the short form.

[26] Prepaid Rule § 1005.18(b)(3)(ii).

In addition, the requirement that the additional fee type disclosure be in bold type gives it undue prominence.[27] Even though the disclosure has no substantive meaning and is of little relevance, the fact that it is set forth in bold type and segregated from other portions of the short form may lead consumers to ascribe an undue level of importance to it.

Based on these concerns, the Section 18(b)(2)(viii) disclosure should be removed from the Prepaid Rule. Removing the fee type disclosure from the short form also would have the benefit of creating more space on the short form for issuers to provide additional, meaningful information regarding the availability of a reduced periodic fee.

The requirement to disclose additional incidence-based fees (or, 5 percent fees) on the short form should be eliminated because the required calculations are overly difficult.

In addition to a prescribed "static" fees in the fee table, Section 18(b)(2)(ix) of the Prepaid Rule requires issuers to include on the short form the two fee types that generate the highest revenue from consumers for a given prepaid account program or across prepaid account programs that share the same fee schedule during a prescribed time period. Fee types that account for less than 5 percent of an issuer's revenues do not need to be disclosed.[28]

Calculating this required disclosure is unduly burdensome. The Prepaid Rule requires issuers or program managers, like NetSpend, to calculate incidence-based fees for hundreds of programs, each with customized fee schedules. Because the programs do not have "identical" fee schedules,[29] the data cannot be aggregated across all of the programs to perform the analysis required by the Prepaid Rule. As a practical matter, these calculations are very difficult and the attendant benefit to consumers is, at best, minimal, particularly given the strict requirements associated with the related short form disclosures.[30]

The Bureau was aware of these concerns when it adopted the Prepaid Rule:

> Some questioned the meaning in the proposed rule of the term "separate prepaid account program," saying initial and ongoing identification and calculation of incidence-based fees would be particularly cost prohibitive for entities with hundreds or thousands of separate prepaid account programs, as they said is the case with certain companies that issue or manage payroll card account programs. Some commenters involved in payroll card account programs

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[27] Prepaid Rule § 1005.18(b)(7)(i)(C)(ii)(B).

[28] *See* Prepaid Rule § 1005.18(b)(2)(ix). (Finance charges as described in Regulation Z are also excluded.)

[29] The official commentary to the Prepaid Rule uses the word "identical." *See* cmt. 18(B)(2)(ix)(A)–4(iii).

[30] At a minimum, payroll card programs should be excluded from the requirements of Prepaid Rule § 1005.18(b)(2)(ix) because the terms of these programs are negotiated individually with the employers, requiring issuers to perform hundreds of separate calculations to provide information of little relevance to the paycard holders given that they do not have the option to comparison shop among different payroll cards.

> queried whether the proposed rule would require them to calculate incidence-based fees for each individual program negotiated separately with an employer or whether they could aggregate data across programs. For example, one payroll card account program manager with 4,000 individual employer programs said every annual printing would cost $1 per cardholder such that annual printing costs alone would be a multimillion dollar undertaking.[31]

These concerns seem to have been ignored by the Bureau when issuing the final rule. In the Supplementary Information, the Bureau explains its method of reducing these potential burdens:

> Because of the potential burden for determining the additional fee disclosures based on fee revenue data separately for programs that all share the same fee schedule, particularly in the context of payroll card accounts and government benefits accounts, the final rule permits financial institutions to make their additional fee types determination based on the fee types that generate the highest revenue from consumers for a particular prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E).[32]

This explanation is of no practical benefit. Despite being aware that the fees often vary between programs, the Bureau nevertheless imposed a requirement that only programs that feature identical fee schedules can be aggregated for purposes of the incidental fee analysis. This requirement imposes a substantial burden on the prepaid industry with no perceivable attendant consumer benefit, particularly given that, as discussed below, the required short form disclosures of the incidence-based fees likely will be misleading.

The short form incidence-based fee disclosures are misleading because issuers are required to disclose artificially high fees.

When providing a short form disclosure for multiple service plans (such as a Pay-as-you-go Plan and a Monthly Plan), and an additional incidence-based fee type that has more than two fee variations, the issuer must disclose the relevant fee type and the highest fee included in that fee type, coupled with an asterisk linked to the statement that "This fee can be lower depending on how and where this card is used."[33] This approach has the unfortunate result of requiring issuers who offer multiple service plans to display artificially high fees that consumers often may not incur.

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[31] 81 Fed. Reg. at 84,039. Note that NetSpend also manages more than 100 GPR programs and, therefore, from NetSpend's perspective, the problem is not limited to the payroll card context.

[32] *Id.* at 84,044.

[33] Prepaid Rule § 1005.18(b)(2)(ix)(C), (b)(3)(i). Note that a short form disclosure for a single service plan can require a similar disclosure if the 5 percent incidence-based fee type being disclosed has more than two variations that cannot logically be combined into two categories.

For example, assume a financial institution charges $0.25 for bill pay via ACH, $0.50 for bill pay via paper check sent by regular mail and $3.00 for bill pay via paper check sent by expedited delivery. If bill payment is required to be disclosed as an additional fee type with respect to a multiple service plan, the financial institution would have to disclose the fee as $3.00 followed by an asterisk linked to the statement that the fee could be lower depending on how and where the card is used. This requirement could lead consumers to erroneously believe that the fee for bill payment is generally $3.00, even though the other cheaper payment methods are available and used more frequently. This requirement also could result in issuers eliminating the availability of the expedited delivery option so that they can show a lower fee on the short form even though consumers may occasionally find the more expensive feature useful.

Given the difficulties associated with calculating and appropriately disclosing the incidence-based fees as required by the current version of the Prepaid Rule, this requirement should be eliminated. The requirement is overly burdensome for the industry and, as explained above, the benefits of the attendant disclosures to consumers are, at best, marginal. The static fees that are otherwise required to be disclosed on the short form are entirely sufficient to enable consumers to make an informed purchasing decision, and there should be no requirement that issuers perform hundreds of complex calculations to disclose fees that a consumer may never incur.

III. Customer Data: Questions exploring current and future-looking topics regarding the protection of consumer data.

7. *Both the Fair Credit Reporting Act (FCRA) and its implementing Regulation V and the Gramm-Leach-Bliley Act and its implementing Regulation P contain important protections of consumers' personal information. Are these protections sufficient? Why or why not? If not sufficient, what further protections should the Bureau or Congress consider? Are there obligations in these regulations or statutes that impose a burden not justified by the corresponding consumer benefit?*

9. *Most States have enacted laws that afford consumers certain protections in the event of a data breach. There is considerable variation among these laws, including the triggering events for coverage by the law and the requirements and remedies relating to a breach. Would Federal legislation, regulation, or guidance addressing data breaches be desirable? Why or why not? Would it be desirable to have a uniform national standard for data breach obligations? Why or why not?*

Response: There is an opportunity for the Bureau to develop a uniform framework for the collection, use and sharing of personal data. Echoing the response to the RFI submitted by the Innovative Payment Association ("IPA"), of which NetSpend is a member, NetSpend believes that the current state of consumer privacy requirements undermines consumer expectations and trust because it is a patchwork of nonconforming state laws. For this reason, Federal action is needed to develop a uniform framework for the collection, use, and sharing of personal data as well as addressing data breaches. Such Federal action should balance the interests of consumer privacy with not overly burdening industry providers. In support of this goal, NetSpend supports IPA's Proposed Framework for Federal Privacy Legislation (the "IPA Privacy Framework"), a full copy of which is attached to the IPA's response to the RFI. The IPA Privacy Framework supports a principles based approach to privacy legislation that among things is technology neutral in order to foster innovation and competition and seeks to reduce regulatory burdens by harmonizing federal and state laws and regulations, including by expressly preempting non-conforming state law.

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We appreciate the opportunity to provide feedback on the RFI, in particular on the more burdensome aspects of the Prepaid Rule, and we remain available to answer questions and provide any additional information the Bureau may find helpful. We look forward to working with the Bureau to help develop a regulatory framework that both effectively promotes the best interests of consumers of prepaid products and treats prepaid card issuers fairly.

Sincerely,

Kelley C Knutson

Kelley Knutson
President