Keynote Speech for Power of Prepaid

Good morning everyone and thank you for the opportunity to be here today. I consider it a true privilege to be invited to speak with you at the Power of Prepaid conference. Like many others in Congress, I understand the importance of prepaid products. Not only do they appeal across all demographics, but they also allow for the distribution of money safely and at lower costs. Of course, it only follows, then, that the federal government would want to make the distribution harder and the product more expensive. So with our time today I would like to discuss the expanding regulatory state and its impact on the financial service providers.

When I look at the current state of affairs I see a tale of two economies: large companies have generally been able to recover from the 2008 financial crisis while small, Main Street businesses continue to struggle. With over 28 million small businesses in the U.S. and nearly 50% of the private-sector workforce employed by small businesses, this is a serious dilemma for a key part of our economy. Consumers, as well, are largely in the same boat as small business. Credit availability has tightened, especially in rural areas like my district in Colorado, making it difficult for families to bounce back from the Great Recession. More and more families are expected to survive on a paycheck to paycheck basis with no ability to budget for unexpected emergencies. One of the biggest reasons for this continued struggle is the 2010 Dodd-Frank Act, which was purportedly passed to bring stability to the financial system, lift the economy out of recession, and end the “too big to fail” phenomenon. In reality, it has increased market uncertainty, escalated costs for consumers, and continues to produce one unintended consequence after another. The 2,300-page bill re-wrote the playbook for financial services providers, creating a burdensome regulatory framework that is largely unworkable, especially for smaller lending institutions. It has been calculated that the Dodd-Frank Act has imposed 61 million paperwork burden hours and $24 billion in compliance costs, with the hardest hit being small financial firms. Dodd Frank has both driven up industry consolidation and firm failure, which should be a serious cause for concern. This regulatory regime has also created an impassable roadblock for new business entry into the financial sector, stifling growth and innovation along the way. Ultimately, though the legislation was intended to save the financial system, all Dodd Frank has produced are fewer choices and higher prices for consumers.

Unfortunately, the Dodd-Frank Act is just a symptom of a larger problem: the unchecked regulatory expansion of the federal government we are experiencing today. In the Obama administration's regulatory agenda, over 4,000 new regulations are in the pipeline and over 200 of these regulations are considered "economically significant," meaning that they are projected to have an estimated impact on the economy of $100 million or more. Economic historian Niall Ferguson found that over the past 10 years, "final rules" from administrative agencies – which have the effect of law - have outnumbered laws passed by Congress 223 to 1. The rise of this fourth branch of government is disturbing on so many levels. The annual cost imposed by federal rules and regulations now stands at around **$1.9 trillion.** A new study released by George Mason's Mercatus Center posits that, had regulations stayed at the levels they were at in 1980, the American economy would have been around 25% larger than it was in 2012, which equates to about $4 trillion dollars in lost GDP over that 32 year time frame. While Article 1, section 1 of the U.S. Constitution reads "all legislative powers herein granted shall be vested in a Congress of the United States," the difficult truth is that Congress has delegated the authority to make rules to the executive branch agencies, these agencies are consistently outpacing Congress in churning out rules and regulations, and they have created a serious distortion in our system of checks and balances. Along with the staggering economic impact these regulations will have, it is also concerning how these rules are promulgated in a closed, secretive process. More and more of the underlying data used to justify issuing regulations is manipulated to avoid the "economically significant" label so that the final rule does not have to be submitted to the Government Accountability Office and to Congress as required by the Congressional Review Act. It is also apparent, as I have heard first hand from regulators during hearings with the Financial Services Committee, that there is little effort to engage in performing accurate cost-benefit analysis - and even when they do, regulators often do not consider the *cumulative* impact of regulations on financial institutions. This is blatant disregard for the well-being of the regulated entities in favor of growing regulatory supervision. I have also heard extensively from the industry on their compliance burden. Giving examination and supervisory jurisdiction to multiple agencies has resulted in redundant examinations with several regulatory examiners asking the same questions and requesting duplicative information. This rush to regulate has led to what I mentioned earlier: a fragmented, inefficient regulatory framework that burdens small businesses as well as consumers and stagnates economic growth.

A prime example of regulatory agencies' eagerness for unnecessary regulation is the Consumer Financial Protection Bureau's prepaid card rule. The 870-page rule, which at this point has taken over three years of work, is justified by the Bureau as necessary to address a supposed lack of consumer protections. The CFPB would like people to believe they engage in a data-driven approach when rulemaking, targeting areas where regulation is most needed based on their own data collection and the CFPB's Consumer Complaint Portal. However, when it comes to the prepaid card rule, the data fails to justify the need for the rule. Reviewing the CFPB's own data from the Consumer Complaint Portal shows that prepaid card companies receive significantly less complaints than other industries and account for less than half of a percent of the total complaints collected by the Bureau since the portal came online. Consumers and the industry know that prepaid cards are a convenient and cost-effective alternative to checking accounts, yet the CFPB is determined to regulate in this area. The Director himself has made seemingly contradictory statements, saying at field hearings in 2012 and 2014 that prepaid accounts lack regulatory protections, but in February of this year he acknowledged that prepaid card funds held in a bank have federal deposit insurance and he has also promoted prepaid accounts as a lower-risk alternative for people unable to get a traditional checking account. The mixed messages and misleading data point to a single conclusion; this rule is a product of the Bureau’s mentality that more regulation is better, even when it is unnecessary. I pointed out these inconsistencies in questions I submitted to the Bureau last month and I hope to receive a substantive response soon. What is already apparent at this time, however, is that the CFPB started with a pre-set conclusion of promulgating a rule to regulate prepaid cards and attempted to justify that position however they possibly could as they moved forward with the rulemaking process. The rule would apply a one-size-fits-all regulation to different types of prepaid products, requiring disclosures of features one type of product may not even have or regulating a prepaid product like a credit card. Last fall, in a bicameral letter to Director Cordray with Senator Rounds' office, I raised several of these issues, including the rule's coverage, disclosure requirements, implementation deadline, and overdraft requirements, in an effort to draw additional attention to this misguided regulation. Thankfully, the letter, with 43 member signatures, raised awareness of this problem and will hopefully drive substantive changes to the final rule. What the Bureau continuously fails to realize, despite input from Congress, the industry, and consumers, is that adding additional regulations to prepaid cards will fundamentally change the industry landscape for the worse.

It is entirely possible with the finalization of this rule that some products will be phased out, limiting customer choice and further restricting credit products for people who are the most in need of them.

Of course, the CFPB is not alone in pushing regulatory changes that create harmful confusion. As you are certainly aware, the FDIC released revised FAQ Answers in November that would treat deposits associated with prepaid cards as brokered deposits. Again, this is another example of a federal regulator pushing the boundaries of supervision by reinterpreting statute to capture as many entities and businesses models as possible. Even more troubling, the Revised FAQ could potentially require companies to seek a separate “deposit broker” determination for every product. Regulations that require a case-by-case determination are not only completely detrimental to supervision continuity but they also undercut the need for a regulation in the first place. Agencies should be promulgating clear, concise, and uncomplicated rules that follow Congress' original intent. Fortunately, I am working with the Financial Services Committee to develop a solution to this problem that would clarify the FDIC's Revised FAQ Answers and ensure the original statutory intent is restored.

It is disappointing that regulators are not treating prepaid products for what they are: a safe and reliable method to access the financial system for the 28% of American households considered to be unbanked or underbanked. Creating confusion and purposely promulgating over-inclusive regulations to capture a broad array of products will ultimately end up harming consumers and consolidating the industry. It is clear that in some cases regulators drive rulemaking decisions based on personal beliefs rather than comprehensive data collection and analysis. Agencies have also been re-interpreting statutes and regulating through enforcement actions in order to avoid the rulemaking process. Unfortunately, this fine-and-punish mentality is pervasive throughout the federal financial regulatory agencies. Regulation on a case-by-case based creates a fragmented framework that encourages industry confusion and limits growth. Not until we can change the fine and punish mindset to a help and improve approach will there be any positive traction with regulatory agencies. There is no need to promote an antagonistic relationship between the regulator and the regulated. Responsible business growth and innovation can thrive in a refined regulatory framework with clearly defined boundaries and rules.

To that end, it is encouraging to work with the Financial Services Committee to create solutions that help both industry and consumers. Chairman Hensarling has worked tirelessly to advance commonsense legislation through Committee that promotes innovation, fosters safe business growth, and brings accountability to the regulatory state. I look forward to the Chairman's Dodd Frank repeal and replace legislative package that will provide much needed regulatory relief for the financial services industry. House leadership has also been examining methods that will bring the power to legislate back to Congress and ensure that our system of checks and balances is restored. So much of what ails our economy today is a result of rules coming from administrative agencies that have not conducted a rigorous cost-benefit analysis or studied the cumulative burden of regulations. I implore you, as industry participants, to stay active in this process as well. Please met with your representatives and senators, speak with your regulators, and engage as much as you can. Your expertise in these issues is invaluable and provides a real life picture of the impact these regulations will have.

Before I end I would again like to thank you all for the opportunity to speak here today. Prepaid card products allow consumers, especially those without a traditional checking account, to have safe and affordable access to the financial system. As we continue to transition away from paper money, it will become even more difficult in today's world to function efficiently without that access. Whether it is paying bills, grocery shopping, or millions of other every day activities, prepaid card products ensure that everyone has the opportunity to participate. I appreciate all of you hard work in this area and welcome any questions you might have at this time. Thank you.