

PayPal Customers Take Another Stab At \$3.2M Class Deal

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Law360, Los Angeles (September 10, 2015, 4:35 PM EDT) -- [PayPal Inc.](#) customers claiming the company improperly placed holds on funds in their accounts urged a California federal judge on Wednesday to approve their proposed \$3.2 million settlement of a putative class action, saying it cured deficiencies in a previous version she rejected by shrinking the scope of the release.

In a motion for preliminary approval of the amended version, plaintiffs said that the release had been narrowed without any reduction in the settlement benefit to be paid to the class members. They allege that PayPal placed holds or reserves on funds held in their accounts without notice and when there was no legitimate reason to do so.

U.S. District Judge Sandra [Brown Armstrong](#) rejected a previous version of the settlement [in March](#). She said that her court might not have jurisdiction over the suit's allegations that PayPal violated the terms of a 2004 settlement over similar claims, and also requested more information as to why the class included PayPal account holders going back to 2006 were involved if the disputed conduct only started in 2008.

On Thursday, plaintiffs said that after arm's-length negotiations, the settlement in the instant suit had been changed to exclude the claims over the 2004 settlement and provided more details about the holds dating back to 2006.

"All of this has been done without reducing the class benefit by a single penny," the motion said. "The settlement ... is more than within the bounds of fairness, reasonableness and adequacy, and should be approved."

Plaintiffs accused the online payments processor — which [eBay Inc.](#) spun out [on July 20](#) — of violating its customer agreement, the Electronic Fund Transfer Act and PayPal's 2004 class settlement in *In re: PayPal Litigation (Comb)*.

In February 2014, Judge Armstrong denied a motion for approval of a \$1.4 million settlement, saying that the class definition was overbroad and questioning the benefit of the settlement to class members as well as the scope of the claims released.

A revised settlement agreement submitted for approval in August called for the creation of two classes: an injunctive relief class made up of approximately 100 million PayPal account holders and a claims relief class made up of about 10.5 million account holders, according to court documents.

Under the terms of the settlement, class members would receive \$3.2 million without the release of claims for damages for certain class members. Plaintiffs also asked for provisional certification of the two classes.

The judge questioned whether the court could settle the case, given plaintiffs' allegations that PayPal

violated the 2004 settlement. In addition, the judge said that the parties did not explain why the classes included PayPal account holders since 2006 given that the disputed conduct began in 2008.

Plaintiffs noted in their Thursday motion that although complaints filed in this case have focused most specifically on PayPal's actions concerning the holding of funds in sellers' accounts in 2008, customers' claims aren't limited only to improper holds on sellers' accounts arising in or after that year.

For instance, they are also asserting claims based on the closing or suspending of accounts and claims arising from PayPal's handling of buyers' accounts — claims are based on activities that occurred both before and after 2008. Thus, the relevant class period should run from April 19, 2006, through the date of preliminary approval, they argued.

An attorney for PayPal declined to comment on Thursday. An attorney for the plaintiffs declined to comment beyond the filing.

The plaintiffs are represented by Jeffrey A. Leon of Quantum Legal LLC, Mark N. Todzo of Lexington Law Group, Steven R. Jaffe of Farmer Jaffe Weissing Edwards Fistos & Lehman PL, and Jonathan Shub of Kohn Swift & Graf PC.

PayPal is represented by Julia B. Strickland, Wesley Michael Griffith and David Wesley Moon of Stroock & Stroock & Lavan LLP.

The case is *Moises Zepeda v. PayPal Inc.*, case number 4:10-cv-02500, in the U.S. District Court for the Northern District of California.

--Additional reporting by Y. Peter Kang and Chelsea Naso. Editing by Stephen Berg.

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0 Comments



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February 22, 2017

Mr. David Silberman, Acting Deputy Director
Ms. Kristine Andreassen, Senior Counsel
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Submitted via email to David.Silberman@CFPB.gov and
Kristine.Andreassen@CFPB.gov

Dear Mr. Silberman and Ms. Andreassen:

Thank you for the opportunity to speak with you and your colleagues at the Consumer Financial Protection Bureau last Friday, February 17, 2017. We appreciate your willingness to discuss the adverse and possibly unintended consequences of certain provisions of the Bureau's prepaid account rule and official commentary relating to extensions of credit. PayPal deeply respects the CFPB's mission to protect consumers by fostering their ability to make informed financial decisions free from undue pressure and based on clear disclosures and a thorough understanding of product offerings. We subscribe to the same philosophy and strive to ensure that our existing and potential customers are fully aware of the benefits and possible risks of the products and services we provide.

As requested, included below is the proposed specific language amending the official commentary to the rule that we shared during the meeting. We believe these revisions would better serve consumers by avoiding the adverse consequences we discussed, while respecting the integrity of the rule to protect consumers from the risks identified by the CFPB relating to overdraft and other credit features offered in connection with prepaid cards. Specifically, we are suggesting an amendment to the official commentary of the final prepaid rule that would allow consumers to link a credit card issued by a bank immediately upon opening a digital wallet that meets the definition of a prepaid card even when a business, marketing or promotional agreement exists between the prepaid card issuer and the credit card issuer, as long as the credit card does not provide overdraft protection and is not otherwise uniquely tied to the prepaid card offering. Our proposed amendment would also allow such digital wallets to hold a negative balance in the asset account as long as the negative balance satisfies the requirements of Section 1026.61(a)(4) of the new rule, even if the digital wallet links to a credit card issued by a bank that has a business, marketing or promotional agreement with the prepaid card issuer.

Potential Consumer Confusion

As described in our meeting, the final prepaid rule and commentary will impose a 30-day ban preventing users from linking a credit card, even one acquired through channels completely independent of PayPal, if the issuer of that card has a business, marketing or promotional arrangement with PayPal. These restrictions would reduce consumer choice and cause consumer confusion about the nature of PayPal's digital wallet and about the underlying funding sources that can be connected to the digital wallet. For example, in a scenario where PayPal has entered into a business agreement with Issuer B but not Issuer A, a consumer could add Issuer A's credit card to their PayPal account immediately after opening a PayPal account but could not add Issuer B's credit card for a period of 30 days due to Issuer B's arrangement with PayPal.

As illustrated in our presentation, additional consumer confusion is likely to arise from the long form pre-acquisition disclosure requirements set forth in the new rule's Section 1005.18(b)(4)(vii), which mandates Schumer box disclosures for all covered separate credit features. Such disclosures might be numerous depending on how many credit card issuer "business partners" PayPal has and how many credit cards are offered by each "business partner," and would have to be made to all new PayPal account holders, even if many of these consumers never hold, apply for, or are even offered the credit cards issued by those "business partners."

The final rule and commentary also permit certain negative balances in the asset feature of a prepaid account if the requirements of Section 1026.61(a)(4) are met. One of those requirements is that the prepaid card cannot access credit from a covered separate credit feature. As we discussed, PayPal accounts would not be eligible to hold a negative balance under Section 1026.61(a)(4) whenever a customer links a credit card issued by a bank with which PayPal has a business, marketing or promotional agreement. For example, the negative balance ban would apply even when a negative balance occurs on a PayPal account: (1) as a result of a request from the consumer to use their bank account or debit card to purchase goods or services from an online merchant when the funds from the bank account have not yet settled, and the amount of the transaction will not cause the PayPal account to become negative at the time of the authorization by more than the customer requested amount; or (2) from the reversal of a provisional credit to a prepaid card pursuant to a Regulation E dispute when sufficient funds are not available at the time of the reversal. Consumers are likely to become confused if PayPal is required to open a separate credit account or subaccount to their PayPal account solely because the customer linked a "business partner" credit card either at or subsequent to opening their PayPal account. Such confusion could arise from the receipt of certain Regulation Z disclosures and monthly statements that would be mandated for a separate credit account or subaccount. As we explained last Friday, we do not believe that the mere act of linking a credit card issued by a bank having a business, marketing, or promotional

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agreement with PayPal is an appropriate trigger to ban negative balances in PayPal accounts that would otherwise meet the requirements of Section 1026.61(a)(4). From an economic perspective, the costs of implementing new procedures to avoid negative balances would be significant, and we believe the imposition of the ban would provide few or no resulting benefits to PayPal customers.

Key Provisions of Rule and Commentary

The 30-day ban on offering and soliciting credit applies only to covered separate credit features. 12 C.F.R. § 1026.61(c). Additionally, the exception to the negative balance ban can apply only when a prepaid card cannot access credit from a covered separate credit feature. 12 C.F.R. § 1026.61(a)(4)(i). Section 1026.61(a)(2)(i)(A), defines a “covered separate credit feature” as a separate credit feature that can be accessed by a hybrid prepaid-credit card. That section provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) the card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Section 1026.61(a)(5)(iii) defines “business partner” to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an “arrangement” with the prepaid account issuer or its affiliate. The term “arrangement” is not defined in the text of the rule itself, but the official commentary explains that an “arrangement” exists when either: (1) the prepaid account issuer or its affiliate has an agreement with the person that can extend credit or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers (however, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network); or (2) there is a business, marketing, or promotional agreement between the prepaid card issuer and the person that can extend credit and at the time of the agreement, or at any time afterwards, the prepaid card can draw, transfer, or authorize the draw or transfer of credit from the credit feature.

The concept of “business partner” in the final rule and the explanation of the term “arrangement” used to define “business partner” in the official commentary were added

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by the Bureau after the notice and comment period expired and when the final rule was announced. We appreciate the opportunity you are providing us now to propose modifications to the official commentary that would minimize the adverse consequences we have identified and discussed. As we discussed at our meeting last Friday, we are proposing an amendment to the definition of “arrangement” in the official commentary without having to modify the definitions of “covered separate credit feature” and “business partner” contained in the rule itself. Specifically, we propose clarifying and limiting the definition of “arrangement” – and thereby limiting who is a “business partner” and the scope of the term “covered separate credit feature” – to relationships that involve either: (1) a separate credit feature that provides overdraft protection to the asset account of a prepaid card, or (2) the integration of a separate credit feature of a type or in a manner that is not also offered by or available from a credit issuer or its affiliate that does not have an arrangement with the prepaid card issuer or its affiliate. As set forth below, such limitation can be accomplished through the introduction of the term “linked credit,” which would be defined to include overdraft protection and unique credit features not offered or available by credit issuers that have no relationship with a prepaid card issuer.

Proposed Amendment to Official Commentary

We propose the following language, which highlights in bold the changes to the existing commentary:

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. Arrangement. A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature is a business partner of a prepaid account issuer where the person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate **to offer “linked credit.” For this purpose, “linked credit” means: (a) a separate credit feature that provides overdraft protection to the asset feature of a prepaid account, or (b) the prepaid account can access a separate credit feature of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid card issuer or its affiliate has no business, marketing, or promotional agreement.** A person (other than the prepaid account issuer or its affiliates) that can extend **linked credit** through a separate credit feature or the person’s affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of §1026.61(a)(5)(iii) if the circumstances in either paragraph i or ii are met:

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i. A person that can extend **linked** credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate has an agreement with the person that can extend **linked** credit or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a **linked** credit feature offered by the person that can extend **linked** credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. However, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

ii. A person that can extend **linked** credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate:

A. Has a business, marketing, or promotional agreement or other arrangement with the person that can extend **linked** credit or its affiliate where the agreement or arrangement provides that:

1. Prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend **linked** credit; or

2. The **linked** credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and

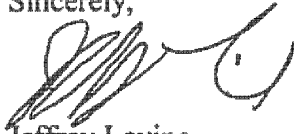
B. At the time of the marketing agreement or arrangement described in comment 61(a)(5)(iii)-1.ii.A, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the **linked** credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement, as described in comment 61(a)(5)(iii)-1.i, between the parties that the card can access the **linked** credit feature. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the **linked** credit feature is effectuated through a card network or payment network.

In the event that the CFPB is unable to grant the relief requested in this letter, PayPal would need an extension of the prepaid account rule effective date of at least 12 months, given the significant amount of development time that would be required to split the PayPal account into two separate accounts - a PayPal digital wallet account and a PayPal digital balance (prepaid) account.

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Thank you again for your time and consideration. Please do not hesitate to reach out if you would like to discuss our proposed language or have any additional questions about the issues we have raised.

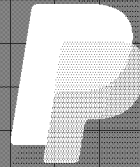
Sincerely,



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CFPB Prepaid Account Rule

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Discussion Points

- Impact to online and mobile shoppers
- Disclosures in a mobile world
- Challenge in meeting deadline



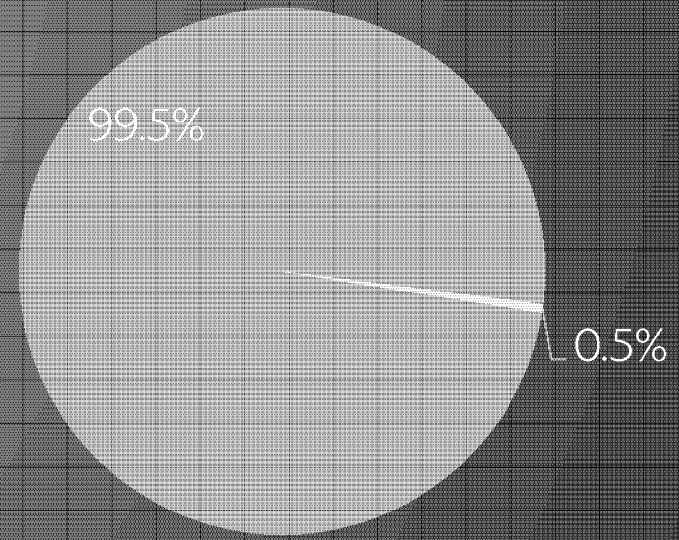
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Impact to online and mobile consumers



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Over 99% of PayPal consumers add a credit card or bank account for their first transaction

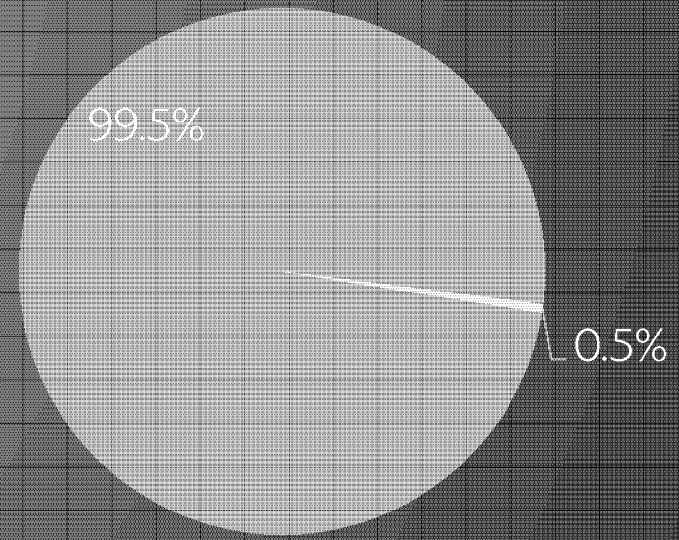


■ With Card/Bank ■ No Card/Bank



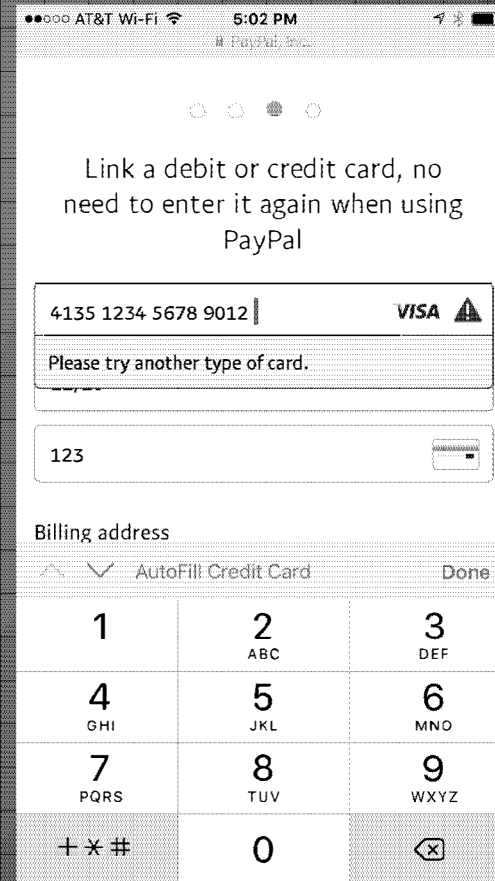
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This reflects PayPal's primary consumer use—pay using your existing cards or bank without sharing your info with merchants



■ With Card/Bank ■ No Card/Bank

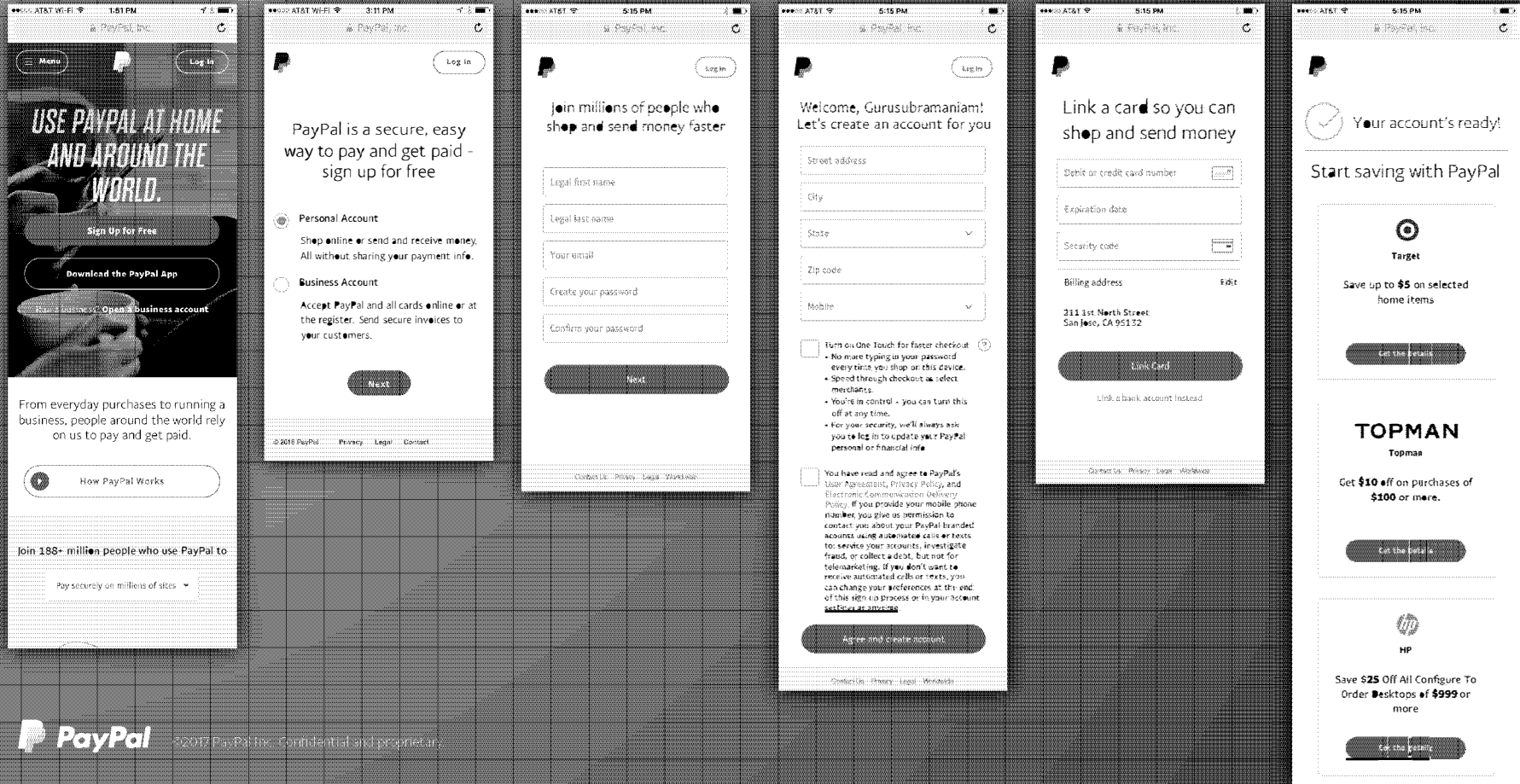
A 30-day waiting period on linking a "covered separate credit feature" could negatively impact millions of new PayPal customers



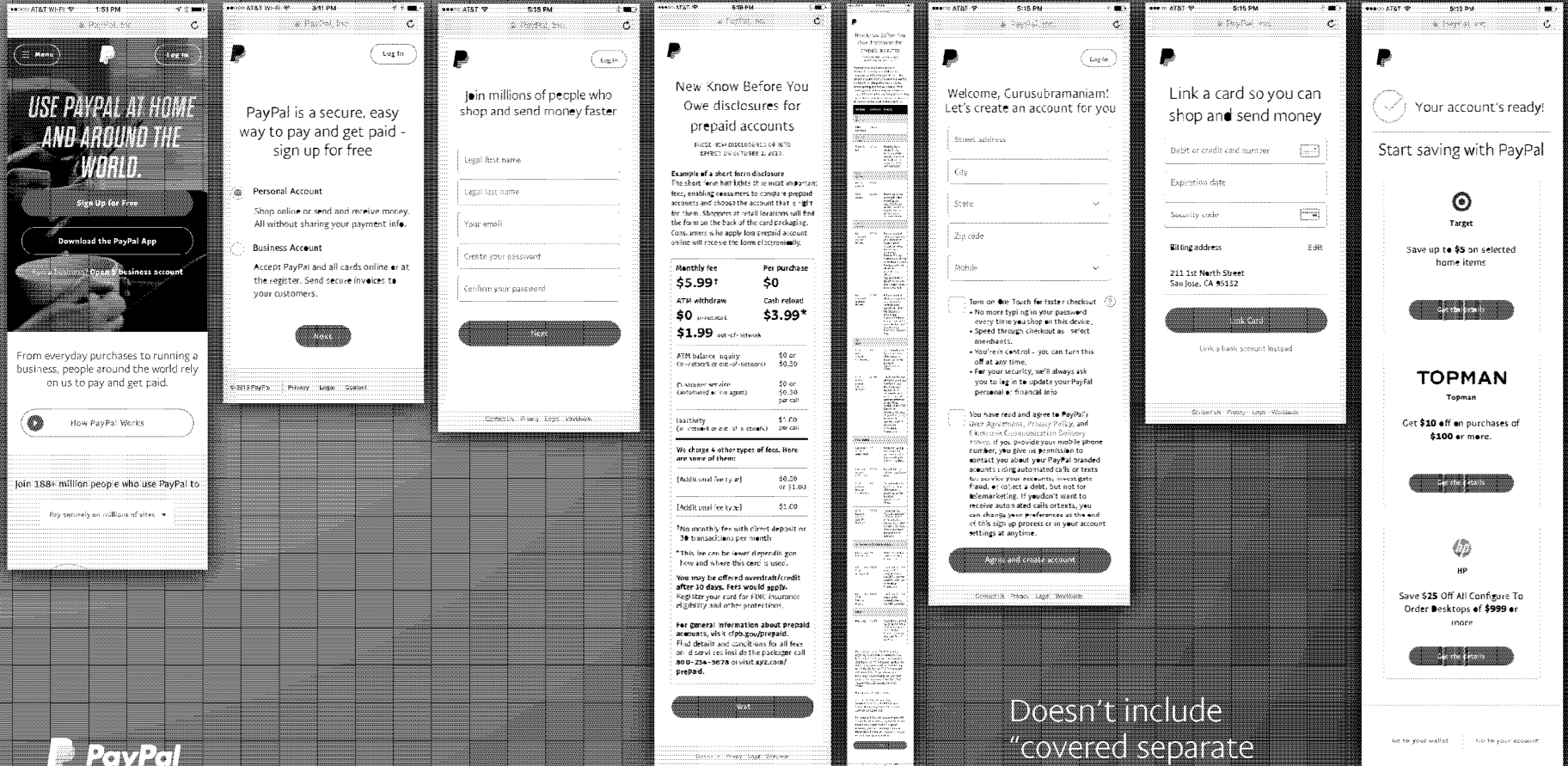
Example Disclosure Implementation

Experience presented for discussion only

PayPal's existing onboarding flow



PayPal's onboarding flow with new disclosures



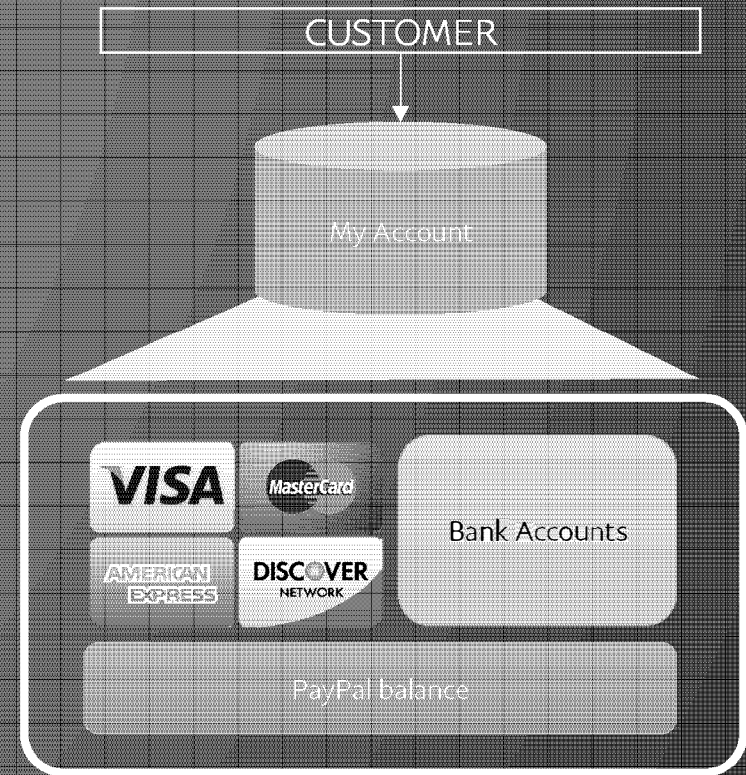
Doesn't include "covered separate credit" disclosures



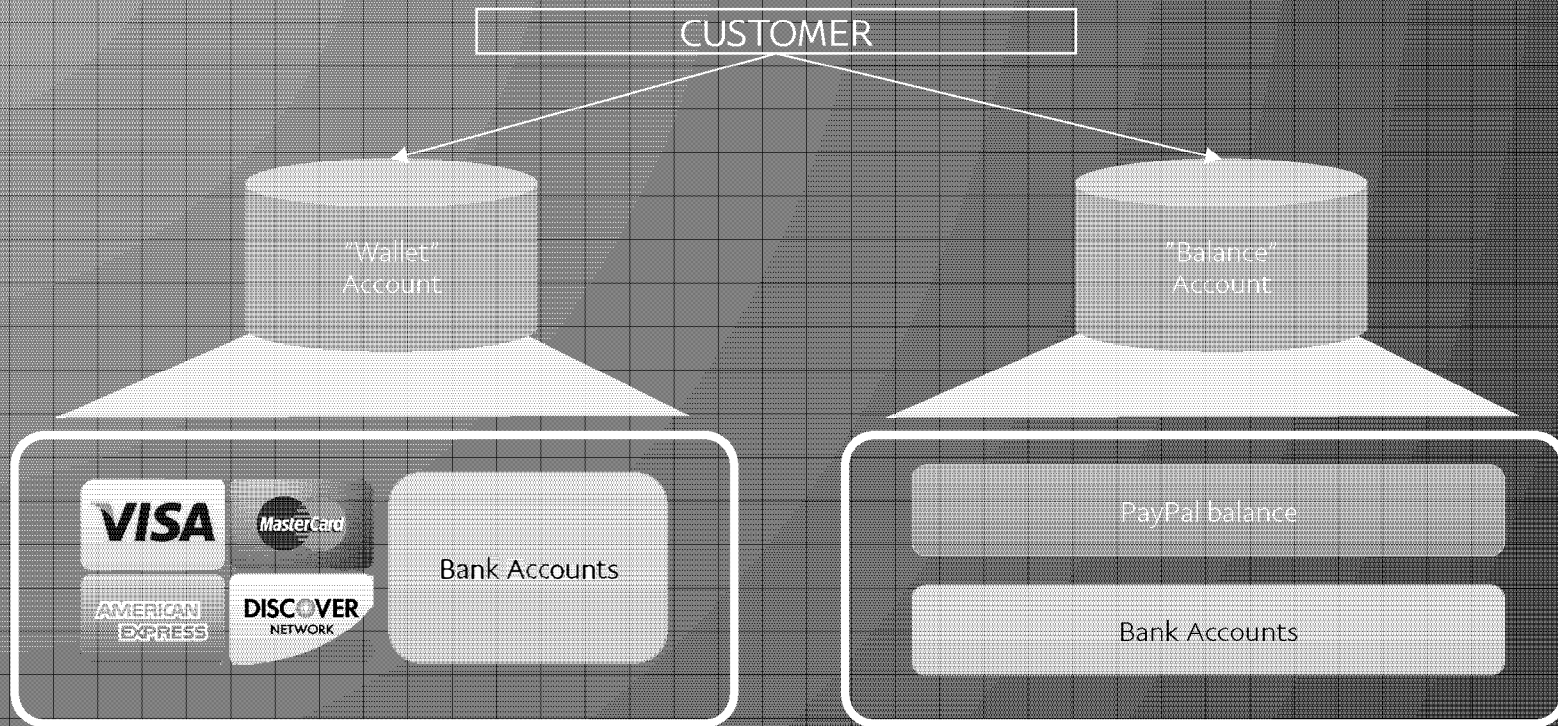
PayPal Account Today

PayPal keeps my financial instruments secure

If a friend sends me money, I can use that for shopping, send to a friend, or move it to a bank account



Split Account View



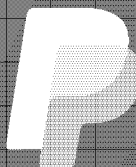
PayPal's challenge in meeting deadline



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**BEFORE THE
CONSUMER FINANCIAL PROTECTION BUREAU**

**In the Matter of
Request for Comment on Advance Notice of Proposed Rulemaking
Electronic Fund Transfers (Regulation E) and General Purpose Reloadable Prepaid Cards**

Docket No. CFPB-2012-0019

Comments of the Staff of the Bureau of Consumer Protection*

July 23, 2012

***These comments represent the views of the staff of the Bureau of Consumer Protection. They are not necessarily the views of the Commission or any individual Commissioner. The Commission has, however, voted to authorize the staff to submit these comments.**

I. Introduction

On May 24, 2012, the Bureau of Consumer Financial Protection (CFPB) issued an advance notice of proposed rulemaking (ANPR), seeking comment, data, and information from the public about general purpose reloadable cards (GPR cards).¹ The CFPB noted that it intends to issue a proposal to extend Regulation E protections to GPR cards, and is interested in learning more about this product, including its costs, benefits, and risks to consumers.² The CFPB is focusing on GPR cards in view of the cards' expansive growth; increasing consumer use; and lack of comprehensive federal regulation.³

The Federal Trade Commission (FTC or Commission) staff supports the protection of consumers who use GPR cards, and the CFPB's proposal to solicit information about the costs and benefits of alternative protections relating to the costs and terms of GPR cards.⁴ Currently, a variety of different payment card options exist—including credit cards, traditional debit cards, electronic benefits transfers (EBTs), payroll cards and gift cards—that have some form of federal protections regarding costs and terms. Although GPR cards are expanding in usage, consumers who use these cards do not have similar protections,⁵ and they may not realize that these protections are lacking. In the discussion below, FTC staff focuses in particular on four protections that have applied to other payment cards: 1) limits on liability for fraud and unauthorized use; 2) disclosure requirements for card fees and expiration dates; 3) error resolution procedures; and 4) authorization standards for recurrent payments.

II. FTC Authority and Experience

The FTC has a long history of being the nation's consumer protection agency, with authority to protect consumers and maintain competition in broad sectors of the economy. It enforces laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, in order to protect the proper functioning and integrity of the marketplace without impeding legitimate business activity. It has law enforcement and other authority over a wide range of practices related to financial services and over most nonbank entities.

The agency enforces Section 5 of the FTC Act,⁶ which prohibits unfair or deceptive acts or practices in or affecting commerce, and the Commission has brought many law enforcement actions against those who injure consumers by engaging in such practices in connection with offering, selling, or providing financial services. For example, the FTC has brought a number of actions against defendants engaged in unfair or deceptive practices involving the sale of GPR cards or prepaid cards.⁷ In addition, the Commission has challenged as deceptive the failure of sellers of similar products, such as prepaid telephone calling cards and gift cards, to adequately disclose fees that consumers must pay.⁸

In addition to its Section 5 enforcement, the Commission also enforces numerous consumer financial services statutes and regulations, including those that specifically apply to payment cards, such as the Truth in Lending Act (TILA) and Regulation Z (which, among other things, set requirements for credit cards), and the Electronic Fund Transfer Act (EFTA) and Regulation E (which, among other things, set requirements for debit cards).⁹ As part of its law enforcement work, the Commission has brought cases alleging that companies failed to provide

timely credits as required by TILA and Regulation Z,¹⁰ or used negative-option plans that violated EFTA and Regulation E, through unauthorized recurrent debiting of bank accounts.¹¹

The Dodd-Frank Act¹² assigned the FTC new enforcement authority for payment cards by adding new Section 920 to EFTA.¹³ Among other things, Section 920 restricts certain practices related to debit and credit card transactions; it also restricts certain debit card interchange fees. The FTC also has enforcement authority for numerous other financial services statutes and regulations.¹⁴

The Commission engages in many activities other than law enforcement to protect consumers of payment cards. For example, the FTC issues consumer and business education,¹⁵ conducts workshops to inform the public and itself about developing consumer protection issues,¹⁶ and responds to requests for information about consumer financial issues from consumers, industry representatives, state law enforcement agencies, and the media. Commission staff also has filed public comments with information and views to assist other agencies, including to assist in their promulgation of rules to implement financial services statutes.¹⁷ The Commission also is focusing increasingly on consumers' use of mobile products and services, which sometimes use GPR cards as a payment method.¹⁸

Drawing on its experience with payment cards, FTC staff offers the information and views below in response to the CFPB's ANPR seeking comment on extending protections to users of GPR cards that are currently afforded to users of other payment cards.

III. Major Payment Card Areas for Consideration

A. Current Regulation of Payment Cards

As noted above, GPR cards have been increasing in popularity and usage.¹⁹ They are one type of prepaid card, which is the fastest growing major payment type.²⁰ Some sellers of GPR cards also are offering them for general retail use, and for transit system use.²¹ Students and the underbanked are among the greatest users of GPR cards.²² Moreover, 91% of underbanked consumers have a mobile phone,²³ and, as noted above, mobile service providers often encourage their customers to use GPR cards as a payment method.²⁴

Consumers are increasingly using GPR cards as an alternative to other payment cards and methods in the marketplace. In addition to the FTC Act's protection against unfair and deceptive practices, consumers who use credit cards, traditional debit cards (linked to a bank or other consumer asset account), electronic benefits transfers, payroll cards, and gift cards²⁵ all are provided some protections relating to their costs and terms under other federal laws. In brief, these protections are:

Credit cards:

Under TILA and Regulation Z, consumers using credit cards can rely on longstanding and substantial protections related to the costs and terms of these cards. These protections include:

- 1) disclosures about fees and other terms;
- 2) limitations on liability for unauthorized use;²⁶
- 3) dispute resolution procedures; and others.²⁷

Debit cards:

Under EFTA and Regulation E, consumers using traditional debit cards are accorded numerous protections. These protections are not identical to those for credit cards under TILA and Regulation Z but are nonetheless important and include:

- 1) disclosures about fees and other terms;
- 2) protections against unauthorized transfers;²⁸
- 3) dispute resolution procedures, with provisional credits to consumers' accounts; and others.²⁹

Electronic benefits transfers, payroll cards, and gift cards:

Under EFTA and Regulation E (including standards set for gift cards by the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act)),³⁰ consumers using these cards or mechanisms all have some form of coverage.³¹

Consumers who use GPR cards generally are not accorded comparable protections under federal law.³² For example, GPR cards are not “credit,” and are not subject to TILA and Regulation Z, as they do not entitle consumers to defer payment of debt or to incur debt and defer its payment.³³ GPR cards generally are not considered to be subject to EFTA and Regulation E, because they are not considered to be an “electronic fund transfer” or to be tied to an “account”³⁴ and no special exception exists to cover them. EFTA and Regulation E, however, do cover GPR cards that are specifically marketed as gift cards, for purposes of the gift card rules. Essentially, EFTA and Regulation E’s standards cover various types of payment cards (like traditional debit cards) that were available to consumers at the time these standards were developed. These standards were revised later to address new products and services, such as electronic benefits transfers, payroll cards, and gift cards. Even though GPR cards have expanded in function and use over time, Regulation E has not been revised to address them.

In sum, although consumers who use GPR cards are protected from unfair and deceptive practices under the FTC Act, they have less protection under other federal laws regarding the cards’ costs and terms than users of other types of payment cards. GPR cards also have been increasing in popularity and use. Providing additional protections to consumers who use GPR cards may instill greater confidence in their use, fostering increased use and competition between GPR cards and other payment methods. Therefore, FTC staff believes that the CFPB’s initiative to assess the costs and benefits, including any related data, of according such protections to consumers who use GPR cards is timely and in the public interest.

B. Major Issues for Consideration in the CFPB’s Initiative

This comment focuses in particular on four protections that apply to various other

payment cards, such as credit cards, debit cards, electronic benefit transfers, payroll cards, and gift cards:³⁵ 1) liability limits for fraud and unauthorized use; 2) disclosure requirements for fees and expiration; 3) error resolution procedures; and 4) authorization standards for recurrent payments. FTC staff recommends that, in assessing these protections, the CFPB consider specific problems experienced by consumers absent these protections and available data about the costs and benefits of them, including any differences between GPRs and other payment cards that may affect these costs and benefits.

1. Liability Limits

At present, federal law does not limit the liability of users of GPR cards for fraudulent or unauthorized use. Thus, federal law does not protect a consumer who loses the card to a thief or otherwise, and an unauthorized person could use the full amount of any remaining balance on the card to make purchases or, with some cards, to obtain the funds themselves.³⁶ Under federal law, consumers who use GPR cards thus bear the entire risk of loss from fraud or unauthorized use.³⁷

In the FTC's experience, liability limits for credit and debit cards under TILA and EFTA have provided important consumer protections against fraud and unauthorized use. As noted above, under TILA and Regulation Z, a consumer's liability is capped at a maximum of \$50, for unauthorized transactions involving credit cards.³⁸ Under EFTA and Regulation E, a consumer is liable for an unauthorized transfer involving a debit card only if the financial institution has provided certain disclosures, and the amount of liability depends on how quickly the consumer notifies the financial institution of the problem.³⁹ By contrast, gift cards have no liability limits.⁴⁰

Based on its experience with payment cards, FTC staff believes that consumers face significant risk of loss through the use of GPR cards. The issue of liability limits for GPR cards was recently considered at the FTC's Mobile Workshop. Panelists considered the issue of liability protection for prepaid cards, including GPR cards, in view of the expanding mobile market.⁴¹ Consumers Union also has explained that "with prepaid cards [which include GPR cards], consumers might be out of all their money due to an unauthorized transaction regardless of how quickly the loss is reported, and may not have access to missing money when money is needed to pay bills and for daily essentials."⁴² Moreover, because underbanked consumers, students, and others of limited means often use GPR cards as a payment mechanism, these losses may have a greater impact on them than they would on more affluent consumers.

Extending liability limits, however, also may impose costs on consumers. Credit and debit card issuers currently are responsible for the difference between the cost of a fraudulent or unauthorized transaction⁴³ and the legal limit on liability. These issuers also may incur costs in administering systems to address fraudulent and unauthorized transactions. Issuers of GPR cards who do not screen potential customers may incur higher marginal costs in developing new systems to prevent fraudulent and unauthorized transactions to comply with a regulation. Credit and debit card issuers who screen card holders presumably have been able to recoup these costs through increases in the cost of cards, such as the interest rate or fees they charge consumers. If issuers of GPR cards are legally responsible for the difference between the cost of a fraudulent

or unauthorized transaction and the legal limit of liability, and they do not currently engage in screening their customers, they too may seek to recoup these costs through increases in the cost of cards. Such cost increases may affect consumers' choice of payment methods, including their choice between GPR cards and cash, which could cause consumers to lose the convenience of GPR cards.

Thus, FTC staff recommends that the CFPB identify and propose for public comment specific requirements governing limitations on consumer liability for GPR cards, taking into account the costs and benefits of alternative ways to limit consumers' liability.

2. Disclosure of Fees and Expiration Dates

GPR cards often involve a variety of fees, which can vary widely by type and amount.⁴⁴ For example, Green Dot – a major seller of GPR cards – charges fees for: 1) card purchase (up to \$4.95 at a retail store); 2) monthly charge (\$5.95, waived if consumer loads \$1,000 in a month or has at least 30 qualifying purchases posted); 3) loading cash at retail locations (up to \$4.95); 5) lost or stolen card replacement (\$4.95); and 6) second card (\$4.95, but free for student card), among others. OmniCard – another major seller of GPR cards – charges fees for: 1) card issuance (\$2.95); 2) monthly maintenance (\$2.95); 3) cash advance (\$4 each); 4) lost or stolen card replacement (\$4.95); 5) express shipment of card (\$29.95); 6) printed and mailed statement (\$29.95); and 7) card to card transfers (\$1), among others.⁴⁵ Further, card fee disclosures may vary in medium and format: disclosures may be on card inserts or online, if at all, and they may not be uniform in terminology or information offered. Information about fees is important to consumers, not only because it facilitates their ability to understand the purchase cost, but also because it empowers them to compare: 1) the costs of GPR cards relative to the costs of other payment cards and methods, and 2) the costs of one GPR card versus competing GPR cards.

GPR cards often have a date on which they expire. In many instances, when the card expires, consumers can lose the value of the card and the sellers of the GPR card can retain the amount that consumers placed on the card.⁴⁶ Some cards permit consumers to obtain another card at expiration, but the consumer must be in good standing or the account must be “active” and the card received at the address to which it is sent.⁴⁷ Because, upon expiration, consumers can lose the amount of funds on the card, and the ability to use the card for which they have paid fees, the expiration date is important to consumers in deciding whether to choose a GPR card or a particular GPR seller.⁴⁸

Consumers may have a difficult time locating information about expiration dates because the information disclosed about them appears to be limited, and even where provided, its presentation varies widely. Some information about expiration dates may be provided with the card's packaging at sale, but it may be either on or adjacent to the card, or instead may be inside the packaging and therefore available only when a consumer purchases the item. Other information may be available online, if at all. Indeed, a review of online information provided with advertisements for GPR cards reveals that: some GPR cards are marketed online as having an expiration date, but with no indication of what the date will be, other than a reference to information on the card itself;⁴⁹ some ads provide an exact expiration date;⁵⁰ and others state that

there is no expiration date.⁵¹ Some cards provide this information on the landing page of the online advertisement;⁵² for others, consumers must search through numerous “FAQs,” “Help,” or “Terms and Conditions” pages – often themselves provided with links in fine print – to reach the information.⁵³

To foster consumer understanding of card features and comparison shopping, federal law currently mandates that issuers disclose to consumers information about fees and other terms of certain payment cards other than GPR cards. As noted, TILA and Regulation Z require that issuers and others provide consumers with clear and conspicuous disclosures of fees and terms for credit cards.⁵⁴ EFTA and Regulation E likewise require that issuers of traditional debit cards and providers of electronic fund transfers clearly and conspicuously disclose fee information.⁵⁵ Regulation E also requires various clear and conspicuous fee disclosures for gift cards,⁵⁶ payroll cards,⁵⁷ and electronic benefits transfers in some circumstances.⁵⁸ Indeed, in response to the confusion that consumers faced when purchasing gift cards that did not adequately disclose expiration dates and other terms, the CARD Act set new standards for gift cards and certain similar products, now part of Regulation E.⁵⁹ These rules require that issuers and sellers clearly and conspicuously disclose expiration dates and impose other limitations on expiration dates.⁶⁰ Consumers who use GPR cards likely would find similar fee and expiration date information to be valuable in making decisions.

Further, the FTC’s law enforcement experience demonstrates that the failure of sellers of payment cards to adequately disclose material information about fees and expiration requirements can deceive consumers and be unlawful under the FTC Act.⁶¹ However, even where consumers may not be deceived, the clear and prominent⁶² disclosure of fees and expiration dates can enhance the ability of consumers to understand terms and comparison shop among alternative payment methods and providers. Not only can such information assist consumers in making better-informed decisions, but it also can foster competition and consumer confidence in the marketplace, which benefits consumers and businesses alike.

FTC staff recognizes that clearly and prominently disclosing fee and expiration date information would impose some costs on providers of GPR cards. Some of these disclosures may already be necessary to avoid deceptive marketing of the value of GPR cards, in violation of Section 5 of the FTC Act. In addition, these costs are likely to vary based on the nature and extent of the information that must be disclosed and the medium (*e.g.*, print, online, or mobile device) in which it must be disclosed. FTC staff notes, however, that the costs of making such disclosures do not appear to have been prohibitive for the issuers of some GPR cards and in the context of other payment methods. FTC staff recommends that the CFPB identify and propose for public comment specific disclosure requirements for fees and expiration dates for GPR cards, taking into account the costs and benefits of alternative ways to provide such information to consumers.

3. Error Resolution Procedures

Merchants may unintentionally debit GPR cards for erroneous amounts. For example, a merchant may inadvertently debit a GPR card in an amount that is two or three times the purchase

price for an item. A merchant directly or through an erroneous bar code also may misplace a decimal and debit a GPR card for \$20 rather than \$2. If such errors are not corrected, it clearly causes harm to consumers whose GPR cards have been debited. Although some issuers of GPR cards may provide some form of procedure to assist consumers in disputing such errors, others do not. For example, the “Ralphs/Kroger” reloadable prepaid debit card provides, among other things, “If you want to dispute a purchase you have made using the card, it is best to contact the retailer who accepted your card.”⁶³ As discussed above, unauthorized use can also occur on GPR cards, leading to erroneous debits on the cards.

When such errors occur with debit or credit cards, federal law provides consumers with dispute resolution rights. Currently, EFTA and Regulation E provide consumers using debit cards with important error resolution rights.⁶⁴ Generally, financial institutions must take steps to resolve disputes within ten business days of receiving a notice of error; if they need additional time, they must provisionally recredit missing funds within the ten business days, and then they may generally take up to 45 days from receipt of the notice of error to investigate and determine whether an error occurred.⁶⁵ These error resolution procedures ensure that consumers have a uniform way to resolve disputes about funds, and also are not left waiting for funds pending a potentially lengthy investigation. These rights enable consumers to challenge many erroneous charges or debits on their accounts, and obtain corrective action.⁶⁶ TILA and Regulation Z also provide important billing dispute rights to consumers, including the right to a prompt investigation and to have funds restored that have already been remitted erroneously within no longer than two billing cycles, or 90 days from receipt of a dispute notice.⁶⁷ In contrast to users of credit and debit cards, users of GPR cards do not have any right under federal law to dispute errors.

As part of the consideration of these issues, FTC staff believes that the CFPB should explore the issues surrounding GPR card users’ access to information about their card balance and transaction history, including the need to notify consumers of their ability to access such information. For example, both TILA and Regulation Z (credit cards) and EFTA and Regulation E (debit cards) require card issuers to provide their customers with periodic account statements and related information.⁶⁸ Access to information about their card balance and transaction history can be important to consumers because otherwise, they may find it difficult to exercise their error resolution rights, as well as to manage their financial obligations. As with limits on liability for unauthorized use, some GPR card issuers voluntarily provide their customers access to such information, either online or via automated telephone systems.⁶⁹ However, other GPR card issuers may charge fees to check this information or may not make it readily available.

In sum, FTC staff believes there that there appear to be benefits to mandating error resolution procedures, with ready access to card balance and transaction history information, for consumers who use GPR cards. In addition, because some GPR card issuers currently offer some protections voluntarily, and because issuers of other payment cards offer error resolution procedures with ready access to account information,⁷⁰ the costs of implementing such procedures for GPR cards might not be prohibitive. FTC staff recommends that the CFPB identify and propose for public comment specific error resolution procedures for GPR cards, taking into account the costs and benefits of alternative ways to offer consumers such protections.

4. Recurrent Payments

In certain circumstances, merchants may make multiple debits to some payment cards that consumers use to purchase goods and services. Merchants often make such recurrent debits pursuant to negative-option plans under which consumers agree to receive periodic shipments of goods or services and have regular charges debited to their payment cards. The payment cards to which merchants may post these debits include GPR cards.

The main consumer protection problem associated with posting recurrent debits is that merchants selling goods and continuity services via negative-option plans could do so without the consumer's authorization.⁷¹ The Commission has brought numerous actions for violations of Section 5 of the FTC Act, among other laws, against merchants that have posted without authorization such recurring debits involving recurrent payments from consumers' accounts in connection with job-related scams,⁷² and government grant scams,⁷³ for example. Moreover, many merchants that post such debits add insult to injury by refusing to accede to consumers' demands that the recurring payments cease.⁷⁴ Because merchants can drain funds from consumers' accounts quickly through repeated debits to payment cards, consumers face the risk of incurring substantial injury if these debits occur without their consent.

Current law protects consumers from unauthorized recurrent charges to their debit cards. Specifically, EFTA and Regulation E require merchants and others who seek to take recurrent debits from consumers' bank accounts through electronic fund transfers (including debit cards) to obtain consumers' preauthorization for the transactions. The authorization must be in the form of a writing signed or similarly authenticated by the consumer, and the merchant or other person must provide a copy to the consumer.⁷⁵ The authorization also must evidence the consumer's identity and assent and must be readily identifiable, with the terms of the authorization clear and readily understandable.⁷⁶ Such protections do not apply to GPR cards.

Given the significant consumer risks and potential harms associated with recurrent debits, FTC staff recommends that the CFPB identify and propose for public comment specific authorization requirements for recurrent payments for GPR cards, taking into account the costs and benefits of alternative ways to offer and obtain such authorization.

IV. Conclusion

FTC staff supports the CFPB's effort to solicit and consider information on the issue of extending various consumer protections to users of GPR cards that are accorded to users of other payment methods. FTC staff believes that it is worthwhile to consider such protections in addition to those afforded consumers under Section 5 of the FTC Act. FTC staff hopes that this comment is useful to the CFPB in its assessment, and appreciates the CFPB's consideration of this information. If any other information would be useful regarding these matters, please contact Jessica Rich, Associate Director for Financial Practices, at (202) 326-3224.

Respectfully submitted,

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1. Electronic Fund Transfers (Regulation E) ANPR, 77 Fed. Reg. 30923 (May 24, 2012). A GPR card is issued for a set amount and is reloadable, meaning the consumer can add funds to the card. *Id.*
2. *Id.* Regulation E is one of the regulations implementing the Electronic Fund Transfer Act (EFTA). The CFPB's Regulation E is found at 12 C.F.R Part 1005. EFTA is found at 15 U.S.C. § 1693 *et seq.* EFTA and Regulation E generally apply to electronic fund transfers (EFTs) that authorize a financial institution to debit or credit a consumer's "account," which is a demand deposit, savings, or other consumer asset account held directly or indirectly by a financial institution and established primarily for personal, family or household purposes. *See* 77 Fed. Reg. at 30924 and 12 C.F.R. § 1005.2(b)(1).
3. *See supra* note 1.
4. *See* 77 Fed. Reg. at 30925.
5. As discussed below, Section 5 of the FTC Act protects consumers who use these cards from unfair or deceptive acts or practices. *See infra* note 6 and accompanying text. However, there are no federal regulations or protections pertaining to the costs and terms of GPR cards comparable to the provisions for other payment cards.
6. 15 U.S.C. § 45(a).
7. *See, e.g., FTC v. VirtualWorks, LLC (VirtualWorks)*, No. C09 03815 (N.D. Cal. filed Aug. 19, 2009), available at <http://www.ftc.gov/os/caselist/0723241/c0903815.shtm>; *FTC v. Swish Marketing, Inc. (Swish Marketing)*, No. C09 03814 (N.D. Cal. filed Aug. 19, 2009), available at <http://www.ftc.gov/os/caselist/0723241/c0903814.shtm>; *FTC v. EdebitPay, LLC (EdebitPay)*, No. 07 4880 (C.D. Cal. filed July 30, 2007), available at <http://www.ftc.gov/os/caselist/0623125/index.shtm>. Generally, the FTC's cases against sellers of GPR cards alleged that marketers duped consumers into buying the cards, baiting them with the ostensible sale of a payday loan or a line of credit.
8. *See, e.g., FTC v. Millenium Telecard, Inc.(Millenium)*, No. 2:11 cv 02479 (D.N.J. filed May 2, 2011); *FTC v. Alternatel, Inc. (Alternatel)*, No. 1:08 cv 21433 (S.D. Fla. filed May 19, 2008) (prepaid telephone calling card cases). The FTC has been at the forefront of federal efforts to protect consumers from deceptive practices in the prepaid calling cards business. *See* Prepared Statement of the Federal Trade Commission on Prepaid Calling Cards Before the House Subcommittee on Commerce, Trade, and Consumer Protection, Committee on Energy and Commerce, Dec. 3, 2009, available at <http://www.ftc.gov/os/2009/12/P074406prepaidcc.pdf>. Prepaid calling cards have some of the same vulnerabilities as GPR cards. The CFPB's ANPR focuses on open loop cards (which can be used any place that accepts payment from a retail electronic payments network, including Visa, MasterCard, American Express or Discover) and prepaid calling cards are generally closed loop mechanisms (which can be used

only at a specific merchant or group of merchants). Nevertheless, some similar issues including confusing and inadequately disclosed fees and terms can occur in both mechanisms. Prepaid calling cards can serve as a convenient and inexpensive lifeline to connect consumers particularly recent immigrants and members of the U.S. armed services to their families. See *In re Darden Restaurants (Darden)*, F.T.C. Dkt. No. C 4189 (2007), and *In re KMart Corp. (KMart)*, F.T.C. Dkt. No. C 4197 (2007) (gift card cases).

9. 15 U.S.C. § 1601 *et seq.* TILA is implemented by Regulation Z; the CFPB's Regulation Z is found at 12 C.F.R. Part 1026. Among other things, TILA and Regulation Z establish disclosure requirements and dispute resolution procedures for open end credit (including for credit cards), limit liability for unauthorized use of credit cards, and set other consumer protections for credit cards, as well as for other types of credit. Among other things, EFTA and Regulation E establish disclosure requirements and error resolution procedures for debit cards and certain other types of electronic fund transfers (EFTs), limit liability for unauthorized EFTs, and set various other consumer protections for EFTs, gift cards, and certain other electronic transactions, including for foreign remittance transfers. See generally EFTA and Regulation E, *supra* note 2.

10. See *FTC v. Xpics Publishing, Inc.*, Civ. Action No. 00 7613 (C.D. Cal. filed Jul. 13, 2000), available at <http://www.ftc.gov/os/caselist/9823541.shtm>, *FTC v. Netpliance*, Civ. Action No. A 01 CA 420 SS (W.D. Tex. filed June 27, 2001), available at <http://www.ftc.gov/os/2001/07/netpliancecomplaint.pdf>, (complaint charging, among other things, failure to provide timely credits regarding consumers' credit accounts).

11. See, e.g., *FTC v. Leanspa*, No. 3:11 cv 01715 (D. Conn. filed Nov. 7, 2011), available at <http://www.ftc.gov/os/caselist/1123135/index.shtm>; *FTC v. Willms*, No. 2:11 cv 00828 (W.D. Wash. filed Sept. 2, 2011) (amended complaint), available at <http://www.ftc.gov/os/caselist/1023012/index.shtm>; *FTC v. Grant Connect, LLC (Grant Connect)*, 2:09 cv 01349 (D. Nev. filed July 27, 2009), available at <http://www.ftc.gov/os/caselist/0923108/index.shtm>; *FTC v. Johnson (Johnson)*, No. 2:10 cv 02203 (D. Nev. filed Dec. 21, 2010), available at <http://www.ftc.gov/os/caselist/1023015/index.shtm>; *FTC v. Central Coast Nutraceuticals, Inc.*, No. 10 cv 4931 (N.D. Ill. filed Aug. 5, 2010), available at <http://www.ftc.gov/os/caselist/1023028/index.shtm>. The FTC has brought scores of negative option cases involving credit or debit cards, over many years.

12. The Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank Act"), Pub. L. 111 203, 124 Stat. 1376 (2010). Under the Dodd Frank Act, the Commission has the authority to continue to enforce many consumer financial statutes and regulations, including TILA and Regulation Z, and EFTA and Regulation E, and also enforce any CFPB rules applicable to entities within the FTC's jurisdiction.

13. See Dodd Frank Act, *id.*, § 1075. The Federal Reserve Board implemented some of these requirements through new final and interim regulations, including new Regulation II, 12 C.F.R. Part 235, for the debit card interchange fee and routing provisions of the Dodd Frank Act. See Debit Card Interchange Fees and Routing, Final Rule, 76 Fed. Reg. 43394 (July 20, 2011), and Interim Final Rule, 76 Fed. Reg. 43478 (July 20, 2011), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm>. Regulation II implements parts of EFTA. The FTC enforces Regulation II for nonbank entities, including payment networks, issuers, and merchants. The FTC also enforces related statutory requirements that were self effecting without regulatory implementation, which restrict payment card networks from limiting merchants and others in establishing terms for acceptance of payment cards. See Dodd Frank Act, *id.*

14. For example, the FTC also enforces the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*; the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*; and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

15. See, e.g., FTC, NEW RULES ON ELECTRONIC PAYMENTS LOWER COSTS FOR RETAILERS, available at <http://business.ftc.gov/documents/bus78> new rules electronic payments lower costs retailers.

16. The FTC recently held two workshops that also pertain to financial services, including payment cards. *See, e.g.,* FTC Workshop, *Paper Plastic . . . or Mobile?* (Apr. 26, 2012), available at <http://www.ftc.gov/bcp/workshops/mobilepayments>, and FTC Workshop, *In Short: Advertising & Privacy Disclosures in a Digital World* (May 30, 2012), available at <http://www.ftc.gov/bcp/workshops/mobilepayments>.
17. *See, e.g.,* FTC, Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning, Before the Board of Governors of the Federal Reserve System, In the Matter of Request for Comments on Truth in Lending, Proposed Rule (Apr. 8, 2008), available at <http://www.ftc.gov/opa/2008/04/frb.shtm>; FTC, Comment of the Staff of the Bureau of Consumer Protection, In the Matter of the Office of Thrift Supervision's Advance Notice of Proposed Rulemaking Regarding Unfair or Deceptive Acts or Practices (Dec. 12, 2007), available at <http://www.ftc.gov/opa/2007/12/thrift.shtm>.
18. *See supra* note 16.
19. 77 Fed. Reg. 30923. *See also* American Banker, "Consumer Finance, Prepaid Industry Expects Pressure to Simplify Fees," May 31, 2012 ("Prepaid cards appeal to a diverse and growing consumer base . . .").
20. Federal Reserve System, *The 2010 Federal Reserve Payments Study*, Apr. 5, 2011 at 68, available at http://www.frbservices.org/files/communications/pdf/research/2010_payments_study.pdf. Prepaid cards or general purpose reloadable cards are being marketed as attractive alternatives to check cashiers and traditional bank accounts. *See generally* Consumers Union, *ConsumerReports Prepaid Cards: Loaded with Fees, Weak on Protections (Consumers Union Report)*, Mar. 2012, available at http://www.consumersunion.org/pdf/Prepaid_Cards_Report_2012.pdf.
21. *See* Federal Reserve Bank of Philadelphia, *A Prepaid Case Study: Ready Credit's General Purpose & Transit Fare Programs*, Apr. 2012, available at http://www.phil.frb.org/consumer_credit_and_payments/payment_cards_center/publications/discussion_papers/2012/D_2012_April_Ready_Credit.pdf.
22. Banks and financial firms now control or influence federal financial aid disbursement to over 9 million students by linking prepaid debit cards to student id cards; some of these cards involve prepaid reloadable (open loop) cards. *See* U.S. PIRG Education Fund, *The Campus Debit Card Trap*, May 2012, available at http://www.uspirgedfund.org/sites/pirg/files/reports/USPIRG_Debitcardtrap_may2012final_2_0.pdf.
23. Federal Reserve System, *Consumers and Mobile Financial Services*, Mar. 2012, at 19.
24. Also, more mobile service providers are focusing on underbanked consumers, who tend to use general purpose reloadable prepaid accounts as bank account substitutes. *See generally* Center for Financial Services Innovation, *Reaching Underbanked Consumers Through Mobile Services*, 2011, available at http://www.ftc.gov/os/comments/mobilepayments/00018_82915.pdf (submitted as a comment to the FTC's Workshop, *Paper, Plastic or Mobile*), *see supra* note 16.
25. Both gift cards and GPR cards are forms of prepaid cards, where consumer place value in advance on or through the card. GPR cards are reloadable, and can be used to add value. Regulation E applies to GPR cards that are marketed as gift cards, but does not generally apply to GFR cards. *See* 12 C.F.R. § 1005.20.
26. All users of credit cards, not solely consumers, have limited liability for unauthorized use of these cards. *See* 12 C.F.R. § 1026.12-1, CFPB Official Staff Commentary to Regulation Z.
27. *See, e.g.,* 12 C.F.R. §§ 1026.5, 1026.6, 1026.12(b), and 1026.13.
28. The limits on consumers' liability vary, depending on how quickly consumers report the loss or theft of the card. *See generally* 12 C.F.R. § 1005.6.

29. *See, e.g.*, 12 C.F.R. §§ 1005.7, 1005.10, and 1005.11.
30. Pub. L. 111 24, 123 Stat. 1734 (2009).
31. *See generally* 12 C.F.R. §§ 1005.15, 1005.18, and 1005.20.
32. *See* 77 Fed. Reg. 30924 25. GPR cards that are marketed as gift cards are subject to the gift card rules under Regulation E. *See* 12 C.F.R. § 1005.20. These requirements include, among other things, disclosures about gift card features and terms pertaining to fees and expiration dates, and restrictions on fees and expiration. However, as noted, Regulation E generally does not apply to GPR cards that are not marketed as gift cards.

As noted above, Regulation II, under EFTA, applies in some respects to GPR cards. These rules impose limits on interchange transaction fees, and prohibit network exclusivity and routing limits. *See generally* 12 C.F.R. Part 235; *see also* Debit Card Interchange Fees and Routing, Final Rule, 76 Fed. Reg. 43394 (July 20, 2011), available at http://www.gpo.gov/fdsys/pkg/FR_2011_07_20/pdf/2011_16861.pdf, and Debit Card Interchange Fees and Routing, Interim Final Rule; Request for Comment, 76 Fed. Reg. 43478 (July 20, 2011), available at http://www.gpo.gov/fdsys/pkg/FR_2011_07_20/pdf/2011_16860.pdf.

33. *See, e.g.*, Regulation Z, 12 C.F.R. § 1026.2(a)(14).
34. *See* Regulation E definition of “electronic fund transfer,” including “any transfer of funds . . . for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account.” 12 C.F.R. § 1005.3. *See also* definition of “account,” as a “demand deposit (checking), savings, or other consumer asset account . . . held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.” 12 C.F.R. § 1005.2(b)(1). Although the cards’ funds may be accessible by consumers through various entities, they may be held in some form of aggregate or “pooled” arrangement with other funds, rather than in a consumer asset account itself.
35. The CFPB may wish to consider the example of payroll cards, as one possible approach in this area. In 2006, payroll cards were increasing in popularity and use. Littler, *Debunking Myths about Payroll Debit Cards*, Nov. 3, 2010 available at http://www.littler.com/publication_press/publication/debunking_myths_about_payroll_debit_cards (“Payroll debit cards work similar to a credit card or bank debit card.”) In August 2006, the Federal Reserve Board amended Regulation E’s definition of “account” to include a “payroll card account,” with the result that Regulation E’s substantive and disclosure protections applied, albeit with certain specific provisions designed for payroll card considerations. *See generally* 71 Fed. Reg. 51437 (Aug. 30, 2006). Regulation E’s unauthorized use and error resolution protections are now among the protections afforded to consumers for payroll cards. *Id.*

36. Although GPR cards do not generally provide for overdraft usage, some cards permit consumers to opt in to such a program. *See* 77 Fed. Reg. 30923 (May 24, 2012). Thus, some consumers using GPR cards could experience overdrafts for fraudulent use, thereby increasing their potential loss.

37. Some entities may offer voluntary contractual coverage to protect consumers, to some degree, from fraud or unauthorized use. Although these protections may be helpful to consumers, they could be rescinded at any time, and they are not uniform or enforceable under federal law. They also have specific limitations in application. *See, e.g.*, Visa and MasterCard’s “zero liability” programs, available at http://usa.visa.com/personal/security/visa_security_program/zero_liability.html and http://www.mastercard.us/zero_liability.html.

38. *See* 12 C.F.R. § 1026.12.

39. *See* 12 C.F.R. § 1005.6. The consumer’s liability is limited to \$50, if reported within two business days of discovery, and up to \$500 for charges thereafter; however, if the loss is not reported within sixty days after the consumer’s periodic statement is mailed that includes the loss, the consumer can face unlimited liability for charges

incurred thereafter.

40. *See* 12 C.F.R. § 1005.20.

41. *See generally* FTC Workshop Transcript, Paper, Plastic . . . or Mobile, Session 2, *available at* <http://htc01.media.globix.net/COMP008760MOD1/ftcweb/transcripts/042612FTCsess2.pdf>.

42. *See Consumers Union Report* at 17, *supra* note 20.

43. Issuers also may incur the costs of voluntarily adopting and implementing measures (such as the use of personal identification numbers (PINs)) to prevent fraudulent or unauthorized transactions.

44. *See generally id.* *See also* Consumer Action, *Prepaid Card Survey*, April 2012, *available at* <http://www.consumeraction.org/downloads/press/2012PrepaidCardSurvey.pdf>; *see also* Consumer Action, *Prepaid Card News*, Spring 2012, *available at* http://www.consumeraction.org/downloads/english/CA_News_Spring_2012.pdf.

45. Green Dot and OmniCard disclose some fee information in some media. *See, e.g.*, “Green Dot Card Fees,” *available at* www.greendot.com/greendot/aboutourproducts; Omni Card Fees Schedule, *available at* <http://www.omnicard.com/feeschedule>.

46. *See, e.g.*, OmniCard FAQs, *available at* <http://www.omnicard.com/faqs>. (“After the Card has expired, it is no longer valid, you will not be able to add funds to the Card and all transactions will be declined.”)

47. *See, e.g.* OmniCard, FAQs, *available at* <http://www.omnicard.com/faqs>, and Terms & Conditions, *available at* <http://www.omnicard.com/termsconditions> (“Your Card is valid until the date embossed on the front of the card (“the expiration date”) or until the Card has been inactive for over 120 days and has a \$0 balance at which time the Card will automatically expire. After the Card has expired, it is no longer valid, you will not be able to add funds to the Card and all transactions will be declined.” “If your card is active, you will automatically be issued a new Card a few weeks prior to its expiration date. If the new Card is returned to us due to an invalid address, it will become an “expired” Card . . .”).

48. As noted, because the imposition of fees on cards can cause the card balance to decline over time, consumers may not actually have an “active” card at expiration, and hence may not receive another card. A similar issue arose in the FTC’s gift card cases; the complaints charged that, although the cards were marketed as having no expiration dates, dormancy fees were deducted from the card’s balance during months of inactivity, causing cards that previously had value to expire. *See Darden*, and *KMart*, *supra* note 8 (complaints charged that, although the cards were marketed as having no expiration dates or as permitting consumers to redeem the cards’ value, dormancy fees were deducted from the cards’ balance during months of inactivity, causing cards that previously had value to expire or have little or no value). Similarly, in the FTC cases against marketers of prepaid calling cards, the FTC alleged deception where the defendants failed to disclose fees that would be applied to the balance on the card. *See supra* note 8.

49. *See, e.g.*, OmniCard, FAQs, *supra* note 46.

50. For example, TransCard has a 36 month expiration. *See* TransCard, Reloadable Cards, *available at* <http://corp.transcard.com/en/Products/ReloadableCards.aspx>.

51. The American Express PASS Card (described by American Express as a “reloadable prepaid card parents give to teens and young adults”) states in an online ad that “[a]vailable funds on the Pass Card do not expire.” *See* American Express, FAQs, *available at* https://www.americanexpress.com/us/content/prepaid/pass/faqs.html?vgnextchannel=95ddb81e8482a110VgnVCM100000defaad94RCRD&appInstanceName=default&vgnnextnoice=1&name=pass_markup_faq&type=intbenefitdetail.

52. *See, e.g.*, TransCard, Reloadable Cards, available at <http://corp.transcard.com/en/Products/ReloadableCards.aspx>.
53. *See, e.g.*, OmniCard, FAQs, *supra* note 46; Green Dot, Reloadable Prepaid Cards, Help, available at <http://www.greendot.com/greendot/help#expire>.
54. *See, e.g.*, 12 C.F.R. §§ 1026.5 and 1026.6. Various substantive limits on credit card accounts are found in 12 C.F.R. 1026, Subpart G.
55. *See, e.g.*, 12 C.F.R. §§ 1005.7, and 1005.9.
56. *See* 12 C.F.R. § 1005.20. It also includes limitations on expiration dates, and disclosures of those features.
57. *See* 12 C.F.R. § 1005.18.
58. *See* 12 C.F.R. § 1005.15.
59. *See* 12 C.F.R. § 1005.20. As noted, those rules exclude GPRs that are not marketed as gift cards.
60. *See id.*
61. *See, e.g.*, *Millenium Telecard* and *Alternatel*, *supra* note 8; *see also Edebitpay*, *VirtualWorks*, and *Swish Marketing*, *supra* note 7, and *Darden* and *KMart*, *supra* note 8. Generally, the FTC's cases against sellers of GPR cards alleged that marketers duped consumers into buying the cards, baiting them with the ostensible sale of a payday loan or a line of credit. *See Editpay*, *VirtualWorks*, and *Swish Marketing*, *id.*
62. In enforcing the FTC Act, the Commission has generally required that, if information must be disclosed to consumers, the disclosure must be clear and prominent so that consumers will both notice and understand it. *See generally*, FTC Policy Statement on Deception, appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174-84.
63. *See* Ralphs/Krogers "Frequently Asked Questions," available at <http://www.ralphs.kpfprepaid.com/faq.asp>.
64. *See* 12 C.F.R. § 1005.11. Consumers have up to 60 days from the transmittal date of the statement containing the error, to notify the financial institution. *Id.* Electronic benefit transfers and payroll cards also have some error resolution procedures, tailored to these particular payment mechanisms. *See* 12 C.F.R. §§ 1005.15 and 1005.18.
65. *See* 12 C.F.R. § 1005.11.
66. *See, e.g.*, 12 C.F.R. § 1005.11.
67. *See* 12 C.F.R. § 1026.13. Consumers have up to 60 days from the mailing date of the statement containing the error, to notify the creditor of the error.
68. *See, e.g.*, 12 C.F.R. § 1026.7, 12 C.F.R. § 1005.9, respectively.
69. For example, GreenDot provides online or telephone access to account balance or activity information, at no charge to the consumer. *See* GreenDot, Your Balance and Transaction History, available at <http://www.greendot.com/greendot/help#sure>.
70. *See Consumers Union Report* at 16, *supra* note 20.
71. *See* FTC, *Negative Options, A Report by the staff of the FTC's Division of Enforcement*, Jan. 2009, at i, available at <https://ftcintranet.ftc.gov/cfportal/economics/uploads/Negative%20Option%20Report%20DE%202009.pdf>.

72. See *FTC v. National Sales Group*, No. 11 cv 01230 (N.D. Ill, filed Feb. 22, 2011), available at <http://www.ftc.gov/os/caselist/1023246/index.shtm>.

73. See *Grant Connect* and *Johnson*, *supra* note 11.

74. See, e.g., *FTC v. United States Benefits*, LLC, Civ. No. 3:10 cv 0733 (M.D. Tenn. filed Aug. 3, 2010), available at <http://www.ftc.gov/os/caselist/1023084/index.shtm>.

75. See 12 C.F.R. § 1005.10(b).

76. See 12 C.F.R. §§ 1005.10(b) 5 and 6, CFPB Official Staff Commentary to Regulation E.



July 23, 2012

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

Attention: CFPB Docket No. CFPB-2012-0019

Re: Comment Letter on Advance Notice of Proposed Rulemaking Seeking
Comment, Data and Information on General Purpose Reloadable Cards
(RIN 3170-AA22)

Dear Ms. Jackson:

This letter is submitted to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) on behalf of PayPal, Inc. (“PayPal”) in response to the Bureau’s advance notice of proposed rulemaking (“ANPR”)¹ requesting comments, data, and information about general-purpose reloadable (“GPR”) cards. PayPal appreciates the opportunity to provide its perspective on how PayPal serves its customers’ alternate payments needs.

PayPal is a leading online payments company, with more than 106 million active user accounts internationally, supporting payments in 25 currencies. Headquartered in San Jose, California, PayPal has offices in several states in the United States, along with its International headquarter in Singapore and European headquarter in Luxembourg. PayPal’s payments solution connects into and leverages the traditional payment networks, whether Automated Clearing House (“ACH”), bank card networks, or personal identification networks (“PIN”), enabling its users to make and receive payments in a safe, efficient and cost effective manner. PayPal contracts directly with both merchants and consumers, enabling them to engage in a variety of payment transactions, including person to person, consumer to business, business to consumer, or business to business. As described below, PayPal also offers one prepaid product: the PayPal Prepaid MasterCard, a GPR card issued by The Bancorp Bank (“Bancorp”).

The ANPR seeks input on GPR cards, which are characterized as general-use prepaid cards “issued for a set amount in exchange for payment made by a consumer” and reloadable by the GPR cardholder, “meaning the consumer can add funds to the card.” Specifically excluded from the ANPR are “closed loop cards, debit cards linked to a traditional checking account, non-reloadable cards, payroll cards, electronic benefit transfers (“EBTs”), or gift cards.” While the ANPR specifically refers to “cards,” it

¹ 77 Fed. Reg. 30923, 30923 (May 24, 2012).



clarifies that these devices may include “other mechanisms, such as a key fob or cell phone application, that access a financial account.”²

In this letter, PayPal outlines its recommendations as to how federal regulations should be crafted to both protect consumers and to ensure that companies are able to continue to meet consumers’ alternate payments needs with affordable options, including with GPR cards. In particular, PayPal offers the following observations as the CFPB moves forward on its rulemaking:

- The CFPB’s GPR regulations should carefully define GPR cards so that other types of prepaid cards, as well as money transmitter accounts with prepaid features, are not included within the definition. PayPal is especially concerned about unintended consequences of regulations that would undo existing federal laws and regulations pertaining to other prepaid products that have been carefully crafted to balance the rights of consumers and the business needs of industry participants.
- Consistent with its mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), the CFPB should use its GPR rulemaking as an opportunity to modernize existing Regulation E provisions and to reduce unwarranted regulatory burden, especially with respect to policies for periodic statements, unauthorized transactions, and error resolution. PayPal encourages the CFPB to look to the rules developed for payroll cards – which properly protect consumers and contemplate modern methods for providing them with information about their accounts – as it undertakes its proposed rulemaking.
- With regard to the disclosure of fees associated with GPR cards, PayPal supports the adoption of a fee template that provides important information to consumers about the fees they may incur using a GPR card. This modern approach to fee disclosure would recognize the various channels of distribution and the different features and functionalities of GPR cards. It is extremely important that the fee template be flexible enough to anticipate innovative GPR products that may be developed in the near future.
- As the CFPB evaluates potential regulation of certain GPR card product features like overdraft, savings, and credit building, PayPal encourages the Bureau to develop standards that allow for continued innovation of product features based on consumer feedback.
- Any new rules adopted by the CFPB should be made effective outside the typical inventory replacement cycles to ensure that participants in the GPR card supply chain do not incur crippling costs associated with replacing these cards or updating their other GPR products, or that necessitate changes in

² *Id.*



administrative procedures and systems, or system hardware or software. The rules should provide issuers and other impacted parties a year from the date of issuance to implement such changes, and stock currently in the marketplace or that has been manufactured (even if not yet distributed) should be exempt from such rules.

- While competing financial products like debit and credit cards generally are becoming more expensive, competition and other market forces are combining to make GPR cards more affordable to, and more functional for, consumers. As the CFPB crafts regulation to protect consumers of GPR card products, PayPal encourages the Bureau to remain mindful that increased compliance costs incurred by GPR card providers could ultimately result in GPR cards and other new types of payments products being less affordable for consumers.

I.

About PayPal, Inc.

PayPal is one of the largest payment card acceptors in the United States. Utilizing several types of products, PayPal enables a variety of micro merchants to more easily accept payments by providing them with various value added services, including underwriting the risk of transaction reversals (such as those from consumer disputes) and refunds.

PayPal offers a co-branded,³ Bancorp-issued PayPal Prepaid MasterCard, which is a GPR card that is available to consumers at select retail locations, online, or via mail and that generally may be used anywhere MasterCard products are accepted. After activating a PayPal Prepaid MasterCard, a consumer may load funds onto the card, retrieve cash at an automated teller machine (“ATM”), and link the card to his or her PayPal account. A cardholder who has chosen to link a PayPal Prepaid MasterCard with his or her PayPal Account may choose to use the PayPal Prepaid MasterCard’s Virtual Account feature to make online purchases and payments. Designed to add an extra measure of security, the Virtual Account lets a cardholder avoid sharing his or her actual card number, three-digit security code and expiration with online merchants.

II.

Responses to ANPR Questions

PayPal offers the following responses to the questions posed in the ANPR and stands ready to assist the CFPB as it establishes standards related to GPR cards:

1. *How should the CFPB define GPR cards in the context of Regulation E? Should certain prepaid products not be included in this definition, such as cards that may*

³ NetSpend Corporation is the program manager and processor for the PayPal Prepaid MasterCard program.



serve a limited purpose (e.g., university cards or health spending cards)? Why or why not?

PayPal believes, as a threshold matter, that the Bureau must narrowly define GPR cards so that other prepaid cards or devices with different purposes and different business models – as well as other types of money transmitter accounts that provide prepaid features – are not included within the definition.⁴ PayPal believes that regulations that would apply the same restrictions to virtually all types of prepaid cards or accounts would indicate a failure to appreciate the key distinctions in the different prepaid card business models. PayPal believes that the approach developed by Congress and the Federal Reserve Board of Governors (“Board”) in existing laws and regulations generally recognizes these distinctions.

Although PayPal strongly believes that the CARD Act regulations for gift cards should remain separate from any new Regulation E rules for GPR cards, we believe that the CARD Act provides a solid model for the definition of the term “general-use prepaid card.” GPR cards have several defining characteristics that should be recognized by the Bureau: (1) the cardholder can reload the prepaid card from multiple sources, including at a point of sale, an ATM, a website, or a mobile application; (2) the cardholder is able to redeem the value of the funds on the GPR card at multiple, unaffiliated merchants for goods or services, and at ATMs; (3) the cardholder has purchased the GPR card for personal, family, or household purposes, e.g., for bill payment, and the card can be funded with recurring loads from any source and is the functional equivalent of, and a substitute for, a traditional bank account; and (4) the cardholder is able to access the funds either through a card, fob, or chit.

PayPal believes that any definition of GPR cards under Regulation E should exclude (1) loyalty, award and promotional cards; (2) prepaid products “not marketed to the general public,” i.e., cards that serve a limited purpose for a limited audience, such as health benefit cards; (3) corporate-funded cards, such as flexible spending and health reimbursement account cards, and cards used to pay for corporate expenses or to distribute insurance claims; and (4) value originally loaded on a prepaid card but that has been converted to virtual currency. These specialized reloadable cards are distinguishable from GPR cards because they typically are subject to separate regulation under federal and/or state laws. Adding Regulation E requirements to these products would raise the costs likely causing some issuers to discontinue them, and would stifle new and innovative products that benefit consumers from entering the market.

2. *Should only certain aspects of Regulation E be applied to GPR cards? For example, as Regulation E is currently applied to payroll cards, consumers are not guaranteed a periodic paper statement. If possible, please explain why a GPR card’s use or structure makes any such modification appropriate. If the Bureau were to propose*

⁴ The ANPR confirms that the CFPB is not seeking information about “closed loop” cards, debit cards linked to a traditional checking account, non-reloadable cards, payroll cards, electronic benefit transfers (EBTs), or gift cards.



modifications to the Regulation E protections, what alternative protections or requirements, if any, should the Bureau propose?

PayPal already complies with Regulation E with respect to PayPal accounts and the PayPal Prepaid MasterCard offers many of the consumer protection features adopted under Regulation E, as well. Generally, PayPal believes that, if the Bureau determines that GPR cards should be subject to Regulation E, the standards governing consumer protection for payroll cards under 12 C.F.R. §1005.18 and EBTs, subject to several refinements, are a good model for any GPR card rules developed under Regulation E.

a. Periodic Statements

In the current technological environment, consumers are accessing their PayPal account transaction histories online and on mobile phone devices at www.paypal.com. Consumers have come to expect real-time electronic access to their PayPal account information and transaction histories. PayPal makes available to its account holders their transactions histories on an ongoing basis – they can review them at any time online. In addition, cardholders of the PayPal Prepaid MasterCard who have activated their card and linked the card to their PayPal account may choose to receive balance and transaction information after every transaction. Moreover, PayPal Prepaid MasterCard users may make balance inquiries via text message or interactive voice response (“IVR”) or using a mobile application or PayPal’s website. PayPal’s view is that the standards adopted for payroll cards and EBTs are good models for any GPR card rules developed under Regulation E. The Bureau can have confidence that consumers will not be harmed if they have access to their account information and transaction histories in a manner compliant with the payroll card and EBT provisions in Regulation E, as described below.

For payroll cards, Regulation E provides an alternative to the periodic written statement requirement. For such products, a financial institution does not need to furnish a periodic written statement if it provides the consumer with: (1) an account balance, through a readily available telephone line; (2) an electronic history of account transactions for the previous 60 days from the last time the consumer accessed the account; and (3) a written history of account transactions provided promptly in response to a request and covering at least 60 days.⁵ Regulation E provides a similar flexible standard for periodic statements in the EBT context.⁶

The Board, while adopting standards for an alternative to the periodic written statement requirement for payroll cards, recognized the value in allowing such alternatives, noting in its final rulemaking:

⁵ 12 C.F.R. § 1005.18(b).

⁶ See 12 C.F.R. § 1005.15(c). Although it did not apply the alternative rules to other forms of EFTs when adopting the payroll card rule, the Board agreed to “monitor this issue and [to] reassess whether it would be appropriate to propose such relief in the future.” EFTA, Final Rule, 71 Fed. Reg. 51437, 51443 (Aug. 30, 2006).



...the alternative methods of providing account transaction information currently used by many payroll card providers are comparable to, and in some respects, better than, paper periodic statements. Information available by telephone or on-line is updated routinely, in contrast to periodic statements which only provide information as of the end of each statement cycle. Thus, consumers using telephone and on-line methods often have access to more timely information, which may assist consumers in more effectively tracking transactions to avoid overdrawing their accounts.⁷

Consistent with this analysis, PayPal believes that the CFPB should provide an alternative to the periodic statement requirement for GPR cards, as it does for similar payroll products. Like payroll cards, GPR cards may be open for extended periods of time, may be utilized as an alternative to a traditional bank account, and some are utilized as a mechanism for receiving wages and other government benefit payments on a recurring basis. Given these similarities, PayPal believes that GPR cards should be treated similarly under Regulation E for purposes of the periodic statement requirement.

Permitting GPR card issuers to provide an alternative to the periodic written statement also makes sense from both a cost and consumer perspective. The cost of generating and sending paper statements is high and overly burdensome. Because GPR card balances often are low, the cardholder base is fairly mobile, and some outstanding GPR cards may be dormant, it is difficult to justify the costs of implementing a paper statement requirement for these products. More importantly, from the consumers' perspective, paperless statements are the modern approach to monitoring their account balances and transactions, *i.e.*, consumers who use GPR cards have generally made it clear that they do not want written statements. Requiring paper statements, which would significantly increase the costs to GPR card issues, may also stifle innovation in a relatively young and thriving industry.

b. Change of Terms and Error Resolution Notice Requirements

PayPal also believes that the Bureau should permit GPR card issuers to provide change-in-terms notices electronically instead of by mail, similar to the Regulation E provisions that permit payroll card issuers to provide electronically error resolution notices in connection with electronic periodic statements. PayPal strongly encourages the Bureau to allow GPR card issuers to provide electronic notice via e-mail, a mobile application or via a post to the GPR cardholder's account when they log in. It is important for the Bureau to consider that each change it implements regarding the change-in-terms notice requirements will impact the technology and cost structure throughout the GPR card production, fulfillment and distribution value chain. These costs may be passed onto consumers, which could result in making GPR card products more expensive and, thus, less affordable.

⁷ EFTA, Final Rule, 71 Fed. Reg. 51437, 51443 (Aug. 30, 2006).



PayPal also would recommend that change-in-terms notice requirements be limited to GPR cards that have had cardholder-initiated activity within a timeframe no greater than the preceding six months, e.g., loading of new funds or redemption of funds loaded on the card. Many GPR cards are active only for a few months. A PayPal Prepaid MasterCard user may close his or her account either by withdrawing all of the funds underlying the card or by requesting a paper check. However, in many cases, the GPR card account may never be closed; rather, consumers often will simply stop using a GPR card account and not be required to close it. Given this reality, PayPal strongly encourages the Bureau to limit requirements for change-in-terms notices to those GPR cards that remain active after six months.

c. Resolution of Unauthorized and Erroneous Transactions

Regulation E provides specific timeframes and procedures for both consumers and financial institutions to follow when unauthorized transactions or errors are made or alleged. Currently, under Regulation E, in the case of error resolution, the consumer must report an error within 60 days after the financial institution makes available the periodic statement or provides the passbook documentation. It requires issuers to provide a provisional credit if the financial institution is unable to complete its investigation within 10 business days.

PayPal and many other GPR card companies provide account balance and a transaction history at consumers' fingertips on their websites, via telephone and through mobile phone device applications. With respect to the PayPal Prepaid MasterCard, a cardholder that seeks to dispute a transaction may call PayPal at the toll-free telephone number printed on the back of the PayPal Prepaid MasterCard. If a PayPal Prepaid MasterCard is linked with a cardholder's PayPal Account, the cardholder may also submit the request through the secure online Account Center.

When a consumer is significantly delayed in reporting an unauthorized or erroneous transaction, it can be costly for the issuer or program manager to investigate the circumstances surrounding a transaction to prove that an error may or may not have occurred. Frequently, the issuer is required to provisionally credit the consumer's account, even where the error was made by the consumer, because it cannot complete its investigation of the error within the generally allotted timeframe of 10 days. This can result in a loss to the issuer if the consumer spends the provisional credit by the time the investigation is completed and no funds remain in the account.⁸

In some cases, the issuer learns after the fact that it was a case of "first party fraud." First party fraud occurs when a customer falsely reports an error that is subject to the error resolution provisions of Regulation E. Under 12 C.F.R. § 1005.11(c)(1), a financial

⁸ Under 12 C.F.R. § 1005.11(c), a financial institution must determine whether an error occurred within 10 business days of receiving an error notice and report the results to the consumer within three business days after that. If the financial institution cannot complete its investigation within 10 business days, it may take up to 45 days from the time it received the error notice to investigate, provided that it provisionally credits the consumer's account in the amount of the alleged error, including interest. *Id.*



institution that receives notice of an alleged error must complete an investigation of the error within 10 business days of receipt. However, if the institution cannot complete the investigation within 10 days, it may extend the investigatory period to up to 45 days provided that it provides the consumer with a provisional credit in the amount of the alleged error.⁹ Due to many factors, it is common for an investigation to extend beyond the mandatory 10-business-day investigatory period. When that occurs, issuers are required to provide the consumer with “full use of the [provisional credit] funds during the investigation.”¹⁰ Parties engaged in first party fraud abuse the provisional credit process by falsely reporting an error and then spending or drawing down the full account balance before the institution completes the investigation. When the financial institution determines that it has not made an error, it cannot reverse the provisional credit because the fraudster has already spent the funds or otherwise has no funds available.

GPR card programs generally allow consumers to open and close accounts more easily than a traditional bank account with an associated debit card, and consumers frequently maintain lower balances in GPR card accounts than a traditional bank account with an associated debit card. In addition, GPR cards often can be obtained without undertaking background checks. As such, the provisional credit requirements provide significant first party fraud risks to GPR card issuers.

Given that consumers have increased accessibility to account information for GPR cards, 60 days to report unauthorized transactions or other errors is more than sufficient time to protect consumers’ interests. To give GPR card issuers a reasonable opportunity to investigate the alleged unauthorized transaction or other error, however, PayPal encourages the Bureau to change the provisional credit timeframe to 30 calendar days for GPR cards in general and to 60 calendar days for GPR card accounts opened within 90 days prior to the alleged error. Extending the provisional credit timeframe as proposed would, among other things, combat first party fraud. The risks of first party fraud alone warrant the Bureau distinguishing GPR cards from other accounts to which the provisional credit provision applies.

3. *What steps could the Bureau take to most effectively regulate these products to provide the consumer with transparent, useful, and timely fee disclosures? Should market participants be required to provide disclosure pre-sale, post-sale, or both?*

PayPal believes that it is important to provide its customers with clear and conspicuous disclosures that help them to understand the financial services or products they use. PayPal also agrees that it likely would be beneficial for consumers if there were consistent disclosure for GPR cards across the industry, both pre-sale and post-sale. However, determining the appropriate location and placement of these disclosures may be difficult given the variety of GPR cards, the range of possible GPR card product forms, *e.g.*, mobile phone devices or other virtual forms, and the different distribution channels that are used to sell and deliver such cards. In many instances, it would be more

⁹ 12 C.F.R. § 1005.11(c)(2)(i).

¹⁰ 12 C.F.R. § 1005.11(c)(2)(iii).



beneficial to have these disclosures made available via websites than on the GPR cards or card packaging, especially given the trend for GPR cards to take other forms than plastic cards. PayPal encourages the Bureau to modernize its rules related to product disclosures so as to account for the various channels of distribution and features of GPR products.

To ensure transparency with regard to fees prior to sale, PayPal supports the concept of a “fee chart” on product packaging. Any such template should allow GPR card product providers to retain flexibility as to which specific fees are disclosed. Moreover, the template should take into account the different costs associated with the various distribution channels utilized by GPR card product issuers, and the variety in the functionality of GPR cards across the market and the costs associated with such functionality. Fees need to be clear and conspicuous, but the disclosures utilized to make fees transparent must be flexible enough to encompass both GPR cards currently available and new, innovative GPR products that are being developed.

PayPal’s customers and other GPR card customers would be best served by a fee table that enumerates the most common fees incurred and that excludes tertiary fees that are rarely assessed. This is the approach currently used on the PayPal Prepaid MasterCard, which provides some of the card’s basic fees on the packaging surrounding the card and then provides a full description of potential fees in the terms and conditions included with the card and available on the product website.¹¹

In addition to our support of a fee table, PayPal recognizes that it has a responsibility to keep our consumers informed about their use of PayPal’s products when the customer enrolls as a PayPal customer. PayPal has consistently provided additional information about a customer’s use of his/her PayPal account after purchase. PayPal believes that, after consumers begin to use their PayPal account, they deserve (1) access to account balance information via the Internet and IVR; (2) an online transaction history for up to two years of transactions; and (3) upon request, a written transaction history covering a reasonable period of time up to 90 days.

4. *How can the Bureau best enable a consumer to compare various GPR cards, or other payment products, that may have different fee structures or be offered through various distribution channels? Many GPR cards offer limited space to disclose contract terms. How should market participants convey the most important contractual terms to consumers to enable them to make educated purchase decisions?*

PayPal believes that consumers should have the ability to compare various GPR cards and other payment products that have different fee structures and other features. PayPal works hard to ensure that consumers have the ability to compare its products with others via the materials available to its customers on its website at www.paypal.com.

¹¹ The packaging for the card includes a table listing the purchase fee, monthly fee (unlimited signature and PIN Purchase transactions), domestic ATM cash withdrawal fee, balance inquiry fee at an ATM, and the lack of a fee for inquiring about a balance online, via a toll-free telephone call, or via real-time alerts.



PayPal agrees that reasonable disclosure uniformity, which recognizes the spacing considerations and legitimate challenges of standardizing fees that reflect different features, functionality and business models, will benefit the consumers' ability to compare and evaluate various GPR card products and other payment alternatives. The use of a fee table, as discussed above, would allow consumers to compare GPR cards to other similar GPR card products. In the case of the PayPal Prepaid MasterCard, we are especially pleased to provide consumers the opportunity to compare it with other similar products because we have worked hard with our card partners to ensure that the card is less expensive for consumers than many alternatives. As noted above, however, any industry-accepted template may need to be modified based on information and feedback during the piloting of the fee table. Provision of such a fee table via a link should be deemed to be a compliant disclosure, and would allow the issuer to include other information it deems relevant. It remains extremely important that the Bureau build flexibility into any fee table model to encompass the variety of functions offered and to keep these products affordable for consumers.

Recognizing the difficulties inherent in adopting a "one-size-fits-all" approach to fee disclosures, PayPal encourages the Bureau to see this as an opportunity for it, the industry, and consumer groups to consider establishing modern and innovative approaches to consumer fee disclosures. In light of widespread Internet access via computers, smart mobile phone devices and computer tablets, many consumers strongly prefer electronic disclosures over print formats. In fact, there has been a tremendous shift to eco-friendly approaches to doing business.

As discussed above, with respect to disclosure of a product's contractual terms, PayPal believes that the terms and conditions made available with a GPR card should disclose all fees in a clear and conspicuous manner. The terms and conditions governing the PayPal Prepaid MasterCard, as well as the privacy policy, are available online at www.paypal.com. However, PayPal also submits that the CFPB should recognize that product terms and conditions can be complex. As such, PayPal further encourages the CFPB to allow GPR card issuers to provide consumers short, simplified disclosures about the applicable terms and conditions so long as the disclosures are clear and conspicuous.

Finally, fee disclosures should be flexible enough to allow for differences that may occur when functionality or services are provided by a third-party that is not under the control of the issuer. Indeed, when this happens, many fees that consumers may incur are unknowable to the GPR card issuer when terms and conditions and packaging are printed, or even at the time of purchase. PayPal believes it is important that consumers be alerted to the fact that they will be charged for certain third-party services, and that any such fees should be disclosed by the third party prior to the imposition of the fee for the third-party transaction/service.

PayPal welcomes the chance to work with the Bureau in designing a modern and innovative approach to providing consumers with important information about their GPR card, both before and after their purchase of the cards.



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5. *Many, but not all, GPR card accounts are insured by Federal Deposit Insurance Corporation (FDIC) pass-through insurance (coverage that “passes through” the agent to the holders of the accounts). Other GPR cards may provide alternative security mechanisms, but do not offer FDIC pass-through insurance. Should the existence, or lack thereof, of FDIC pass-through insurance associated with a GPR card be disclosed to the consumer? If so, how and when should the existence of FDIC pass-through insurance be disclosed?*

Although we observe that this question does not suggest that FDIC pass-through insurance would be required under Regulation E, we note that FDIC pass-through insurance is available to PayPal Prepaid MasterCard cardholders that have activated their cards. In addition, all funds within a PayPal accounts are FDIC insured. However, PayPal understands that some non-bank issued products offer similar protections without being “FDIC insured.” PayPal supports the disclosure of such insurance with GPR products that provide it.

Although PayPal discloses FDIC pass-through insurance to consumers, we suggest that the CFPB research the issue of the value of FDIC pass-through insurance disclosure to consumers more carefully, and work in collaboration with the FDIC on this issue, before promulgating a rule requiring it on all GPR cards.

6. *Currently, most GPR cards do not offer credit features, such as an “overdraft” feature that may be offered with a debit card that is linked to a traditional checking account. While an overdraft can occur in unusual circumstances, as when a small-item transaction is submitted for settlement without prior authorization or when a submitted transaction exceeds the authorized amount, generally speaking most GPR cardholders may not be able to withdraw or spend more than the funds loaded on the card. Nonetheless, some GPR card programs do allow cardholders to opt in to an overdraft program in which the issuer may authorize overdrafts and charges an overdraft transaction fee. The Bureau seeks public input on the costs, benefits, and consumer protection issues related to any credit features that may be offered by GPR cards.*

PayPal generally does not allow a customer to spend more money than is loaded onto a PayPal Prepaid. PayPal offers a Purchase Cushion feature on the PayPal Prepaid MasterCard that is available to cardholders who receive at least one qualified direct deposit to the card account. The Purchase Cushion is not an extension of credit; it is a courtesy exercised solely at our discretion by which transactions may be approved that together create up to a \$10 negative balance for a card account. If PayPal permits a negative balance on one or more occasions, we do not obligate ourselves to permit a negative balance on any future occasion and we may refuse to pay a negative balance at any time. There is no fee for this courtesy; however, the cardholder is responsible for repayment of any negative balance incurred. There is a limit of one negative balance at any point in time.

Although we do not include credit features on our GPR prepaid products, PayPal does believe that GPR card issuers should generally be permitted to choose whether they want



to offer “overdraft” features, and we note that, for many consumers, the ability to choose to have credit features, including but not limited to overdrafts, may be important. In some instances, access to such credit products may even assist those who have troubled credit histories to rebuild their credit.

7. *Currently, most GPR cards do not offer a savings account associated with the card. The Bureau seeks public input on the costs, and benefits, and consumer protection issues related to savings features offered with GPR cards.*

To the extent a GPR card is offered in connection with a linked savings account and the savings account permits electronic funds transfers to and from the account, PayPal supports the extension of Regulation E protection to those accounts to the same extent as payroll cards (as described above). At the same time, PayPal urges the CFPB to adopt regulations that do not have the effect of stifling innovation that seeks to improve the services and features that GPR cards provide.

In recent years, PayPal has added various enhancements and features to its products and services. For instance, cardholders can add the optional PayPal Prepaid Card Savings Account to their PayPal Prepaid MasterCard. To open a PayPal Prepaid Card Savings Account through the secure online Account Center, the cardholder must have linked the PayPal Prepaid MasterCard to the PayPal Account. PayPal has been able to add this feature and others as a result of regulations that allow for product innovation. We hope that CFPB will strive to develop rules that allow for continued innovation and protect consumers at the same time.

8. *Currently some GPR cards include a feature that claims to offer consumers the opportunity to improve or build credit. Consumers generally need to opt in to this feature, which involves the reporting of certain information to credit reporting agencies. The Bureau seeks public input and data concerning the efficacy of credit reporting features on GPR cards in enabling consumers to improve or build credit. The Bureau also seeks information on whether regulatory provisions should address how such services are marketed to consumers.*

PayPal supports the continued exploration of ways in which a GPR cardholder’s transaction data (e.g., bill payments)¹² could be used to build a positive credit history to genuinely assist consumers when applying for credit, and would support the offering of this feature to GPR cardholders on an opt-in basis. However, PayPal acknowledges that the availability of credit-building features must be carefully and clearly disclosed, and that consumers must not be misled into believing that their use of a GPR card can improve their credit score, unless there is clear evidence that this can occur.

¹² Under Regulation II (Debit Card Interchange Fees and Routing), card issuers with assets of \$10 billion or more who wish to avail themselves of the “general-use prepaid card” exemption to the interchange fee restrictions would not be able to offer a credit building feature that relies on ACH payment data, e.g., bill payments. To qualify for the general use prepaid card exemption, Section 235.5(c) of Regulation II states that the card must be “the only means of access to the underlying funds, except when all funds are provided to the GPR cardholder in a single transaction.”



9. *Through what methods, and under what circumstances, do market participants communicate a change of contract terms, or other information, to cardholders? Are there inventory replacement cycles that drive the printing of cards to stock distribution outlets? Do market participants conduct periodic maintenance of systems during which updating compliance systems would impose less of a burden? If so, how often does this maintenance occur? Are there other issues with respect to the cost of regulatory compliance about which the CFPB should be aware?*

a. Changes in Terms and Conditions

PayPal believes it is important that its customers have notice of important changes in the terms and conditions governing GPR cards. Like other market participants, PayPal typically communicates changes to contract terms or other important information relating to our products and services to our customers via the PayPal website. In addition, customers can sign up to receive an email when there is a policy change.

PayPal suggests, that, as part of its mission to modernize federal consumer protection regulations, the CFPB should allow GPR card companies to notify cardholders about changes of contractual terms via email, text messaging, and online updates, as an alternative to mailing paper notices. This would assist in keeping costs down and ultimately make GPR cards more affordable for consumers. In turn, this would be a more eco-friendly approach, avoiding the waste of valuable natural resources.

b. Inventory Replacement Cycles

In our experience, prepaid card companies must often order their product inventory many months in advance of stocking such inventory in stores or making such products available via other channels. This cycle has a significant impact on timing for the printing and distribution of cards to merchants and other sales outlets. Replacing product inventory outside of normal merchandising cycles due to regulatory changes can impose substantial technical and logistical hurdles, as well as significant costs, on prepaid card providers. The expenses associated with such replacement would likely force many issuers to either limit consumer access to, or increase consumer costs for, GPR products.

Moreover, replacing inventory due to regulatory changes requires systems changes by retailers or processors that is also often difficult and costly. Many companies “lock down” technological changes to their systems, especially during the last few months of the year. In addition, any changes in card rules that effectively require many retailers to upgrade their point-of-sale hardware and software will be very expensive. Given these considerations, PayPal believes that regulators must provide at least 12 months to become compliant with new rules.

10. *Is there any other information relevant to GPR cards that will help inform the Bureau as it considers how best to address these products or other issues the Bureau should consider in this regard?*



The prepaid card industry, in general, and the GPR card market, in particular, are experiencing substantial growth. This enormous growth has fostered significant competition among prepaid card issuers and has driven many industry participants to be creative about reducing the costs associated with their products to make them more attractive to consumers.

Against this backdrop, PayPal urges the CFPB to avoid any GPR card regulatory scheme modeling any requirements premised on plastic cards or other physical devices. GPR card products have begun to expand rapidly into mobile phone and smart phones devices, with GPR card funds accessible via these phones and devices. PayPal predicts that this trend will continue. PayPal encourages the Bureau to take this into consideration as it develops a GPR card regulatory scheme.

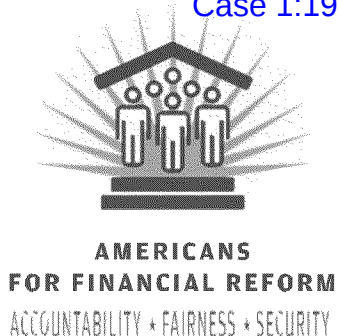
Second, law enforcement and GPR card issuers can both confirm that GPR cards can be subject to fraud, similar to other prepaid products. Problems with first party fraud and fraud perpetrated through organized criminal activity have touched nearly all GPR card issuers. While PayPal acknowledges the importance of protecting consumers, such protection cannot come at the cost of unduly increasing the risk of fraud. PayPal encourages the Bureau to take care to ensure an appropriate balance between the needs of consumers and the needs of the industry to protect against fraud and other criminal misuse of GPR card products.

PayPal appreciates the opportunity to submit this letter for the CFPB's consideration. As a major player in the alternate payments space, PayPal is committed to serving the payments needs of its users in a cost effective and customer friendly manner. We appreciate your desire to understand our business and our industry and look forward to working with you in the future. Please do not hesitate to contact me at (408) 967-1233 or jmuller@paypal.com if you have any questions or concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Muller", with a horizontal line extending to the right.

John Muller
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PayPal, Inc.
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March 23, 2015

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

Re: Comments on proposed prepaid card amendments to Regulation E, Docket No. CFPB-2014-0031 or RIN 3170-AA22

Dear Ms. Jackson:

Thank you for the opportunity to comment on the rules proposed by the Consumer Financial Protection Bureau (CFPB) to protect prepaid cards. These comments are submitted by Americans for Financial Reform and the undersigned consumer, civil rights, labor and community groups.

Prepaid cards are an important and growing market, and we applaud the CFPB for proposing strong rules to protect consumers who use these cards. Despite their similarity to bank account debit cards, many prepaid cards currently fall into gaps in consumer protection rules.

We support the proposal to extend the Electronic Fund Transfer Act (EFTA) and Regulation E to prepaid cards and to enhance those protections. Consumers will benefit from rights in case of loss, theft and unauthorized charges; simple, clear disclosures of fees and other important information; convenient, free access to balances and account information; a ban on compulsory use for wages and public benefits; and rules to limit abusive overdraft fee and credit features. The rules appropriately cover a wide range of prepaid cards, including payroll, student and public benefit cards, as well as newer mobile and virtual prepaid payment systems such as PayPal and others.

The rules limiting overdraft and other credit features are especially important. Prepaid cards should be prepaid, so that they are true to their purpose and will be safe for the millions of sometimes vulnerable consumers who use the cards, as well as for others who turn to prepaid cards as a way to control spending and make payments safely. There should be no overdraft on prepaid cards. When credit is offered to prepaid cardholders, it must be offered separately, honestly, consistent with ability to pay, and in compliance with credit laws.

While the rules are generally strong, we offer several suggestions below for strengthening the rules and closing loopholes. In particular, the CFPB should ban all overdraft fees; apply credit card protections to all credit transferred to a linked prepaid card; and limit fees before account opening and beyond the first year. We also urge the CFPB to require prepaid card funds to be held in accounts protected by deposit insurance and to adopt stronger rules to prevent coercive use of payroll, public benefit, student, released prisoner and other prepaid cards.

1. We support rules to keep prepaid cards prepaid, and to keep credit separate, honest and affordable.

The prepaid card market exists because of the problems caused by overdraft fees on checking accounts. The vast majority of prepaid cards are marketed to and heavily used by consumers who have had trouble with credit and overdraft fees, are living paycheck to paycheck, and may have been shut entirely out of the banking system. Prepaid cards should not be used as a vehicle for taking advantage of their situations and offering unaffordable credit features that lead to a cycle of debt. While consumers who have not had trouble using credit also use prepaid cards, they do when they are looking to control spending or make a payment safely, not for the purposes of obtaining credit.

Consequently, we applaud the CFPB's decision to decline to extend the flawed Regulation E opt-in regime for "overdraft services" to prepaid cards. That regime has not worked for bank accounts, pushing consumers into incurring unnecessary and excessive fees on debit and ATM card transactions. Overdraft "protection" is misnamed and unneeded on prepaid cards, which do not have checks. It is a crude, deceptively expensive and dangerous form of credit that can lead to a cycle of debt and be used by mistake. Overdraft features leave consumers with less ability to meet expenses at the end of the month, not more. We agree that overdrafts – to the extent they are permitted – are a form of credit that should be covered by credit laws including the protections of the Truth in Lending Act and Regulation Z.

Holding a prepaid card account, by itself, does not disqualify a consumer from being eligible for safe and responsible forms of credit. Credit should be offered separately, with an access device separate from the prepaid card. But if a line of credit is accessible through a prepaid card, credit card rules should apply, including these essential protections provided in the proposed rule:

- Credit only based on ability to pay. Determining ability to pay is especially essential before offering credit to prepaid cardholders.
- Fee harvester rules, limiting fees in the first year to 25% of the credit line. This fee limit is not a usury cap; it does not limit the interest rate or cost of the credit. The fee cap does, however, prevent lenders from charging fees that can look deceptively low but can snowball. Pricing through periodic interest rates rather than fees leads to lower and more reasonable costs that are proportional to the amount of credit used and the time that it is used.
- Payments due only once a month, 21 days after a statement. Consumers should have a reasonable time to use credit and to repay it.
- Ban on mandatory electronic repayment or mandatory offset. Lenders should not have priority access to the funds in a consumer's prepaid card account, before the consumer

pays for necessities. Consumers should be able to choose and control how they repay credit. This provision also provides incentives against improvident and predatory lending

- Limits on late fees, over-the-limit fees, and other penalty fees.
- APR disclosures, so consumers can compare credit options.
- A waiting period after acquiring a prepaid card before credit could be offered. (But it should be 90 days, not 30.)

However, we urge the CFPB to prohibit overdraft features and overdraft fees on prepaid cards altogether. If the card is empty, the transaction should simply be declined. The consumer can then decide whether to skip the purchase or pay cash or with credit, if available. Overdraft features force an “all or nothing” approach. Once opted in, every overdrawn transaction is approved up to the credit limit, even if a particular purchase is not important or could be paid in cash without an overdraft fee. Consumers should always use credit consciously, not by mistake. Consumers who know their card has insufficient funds can access credit deliberately and do not need overdraft “protection.”

With respect to credit more generally, we are extremely concerned that the proposal contains a gaping loophole for credit that is accessed through a prepaid card but can, at least in theory, be accessed another way. The proposed rules only apply to credit that can be direct deposited solely to a particular prepaid card dictated by the lender. But lenders may design lines of credit that can be linked to any prepaid card a consumer chooses, and skirt the rules. Or, a credit feature could be designed for and work best when accessed through a particular prepaid card, but the lender could provide a theoretical alternative access point in order to evade the rules, such as the “option” (meaningful or not) to transfer funds through the automated clearinghouse to any account, or even by a payment over the Visa or MasterCard network. The CFPB must close that loophole.

We are especially worried about evasions by payday lenders, which often sell prepaid cards. Payday lenders are moving to lines of credit that help them evade rate caps. The payday lender could offer the option of accessing a line of credit through cash at the payday store, ACH deposit to any account the consumer chooses, or transfers to the payday lender-branded prepaid card. If the prepaid card is the access device, the card would function in the same manner as the credit features that the CFPB has covered, but with none of the proposed protections. The payday lender could even link the credit feature the same day that the consumer acquires the card, without having to wait 30 days.

We urge the CFPB to extend the fee harvester limits beyond the first year and to limit pre-account opening fees. We fear that predatory lenders may offer consumers tiny, low cost credit lines in the first year and then hike up the credit limit and the fees after the fee harvester limits expire. This type of bait-and-switch would be unfair, deceptive and abusive and should be banned. The CFPB should also use its exception authority in Regulation Z, and the new authority added in 2010 to make “additional requirements,” to include pre-account opening fees in the 25% fee cap. While we believe that such fees are abusive on any fee harvester card, prepaid cardholders especially need protection from abusive fees that swamp the small amounts of credit provided and that deceive consumers about the cost of credit.

The 30-day waiting period is also too short. The cardholder will barely have begun to use the card and the issuer will not have significant transaction history to use for determining ability to pay. The waiting period should be 90 days. That waiting period would not prohibit a company from making a completely independent credit offer to the consumer as long as it was not linked to the prepaid card.

We support the proposal to prohibit declined transaction fees on transactions that would have accessed a credit feature. However, it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. Moreover, declined transaction fees are prohibited under Regulation Z and should be under Regulation E as well. They are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid card issuer of the declined transaction. To make the rule more clear for consumers and providers, we recommend that the CFPB simply ban declined transaction fees on all prepaid cards.

2. The CFPB should require funds in prepaid accounts to carry deposit insurance and protection from insolvency.

The CFPB has proposed to require prepaid cards to carry a disclosure informing the consumer if the funds are not protected by FDIC or NCUSIF insurance. Disclosure is insufficient. Prepaid card funds should be required to be held in custodial accounts that carry deposit insurance.

Requiring funds to be held in an account that carries pass-through deposit insurance provides consumers with three important protections. First, the consumer is protected if the bank fails. Second, the funds will be in a depository institution that will be examined regularly by bank regulators for compliance with both safety and soundness and consumer protection rules. Third, the funds must be held in custody for an identified consumer – protecting the funds not only from bank insolvency but also from the creditors of an insolvent program manager. The latter two protections are even more important than the deposit insurance itself.

While most prepaid cards do carry deposit insurance, some cards issued by American Express do not. Other large nonbanks like Google, PayPal, Apple, Amazon and Facebook are developing virtual prepaid payment systems and stored value accounts and may wish to avoid the costs of deposit insurance premiums and the scrutiny of bank regulators.

The CFPB has expressed concerns that consumers misunderstand what protections FDIC insurance provides. That is precisely why it should be required and not be a matter of disclosure.

Consumers tend to expect that their funds are safe and to focus more on low fees than the remote prospect of catastrophe down the road. Safety should not be a matter of “buyer beware” or a trade-off for lower fees; it should be required. Prepaid cards are often bank account substitutes and carry essential wages and other income needed for necessities. Those funds must be held in accounts that are protected from the insolvency of the bank, the program manager or anyone else involved in the card program. To accept a consumer’s core income and hold it in an account that is not safe would be unfair, deceptive and abusive.

3. The CFPB needs to do more to prevent coercive use of payroll, government benefit, college cards and other types of prepaid cards.

We support improved notice to employees and government benefit recipients that they are not required to use a prepaid card. But stronger rules are needed to implement the existing ban on compulsory use. In addition, that ban should be extended to cards used for students, insurance payments, prisons, tax payments and any government payment owed to a consumer.

A vague notice given along with the card is too late. Before being given a payroll, government benefits or student card, consumers should get notice of their other options for receiving funds. Direct deposit to an account of the consumer's choosing should be a required option, along with a paper check if required by state law.

If state law permits the consumer to be enrolled in a card without affirmative consent, the consumer should have 30 days to choose how to receive their funds before being enrolled in the prepaid card. When the card is provided, it should come with a clear, conspicuous notice explaining how to disenroll if the consumer prefers direct deposit to their own account or, if offered or required by state law, a paper check.

It is not an acceptable alternative to permit government agencies to require consumers to receive unemployment compensation or other benefits via a prepaid card with the option of setting up an automatic transfer from the prepaid card to the consumer's own account. The consumer is still required to have the prepaid card, in violation of the EFTA, has to go to the inconvenience of setting up the transfer, and suffers a delay in receiving funds due to the slowness of the ACH system. An opt-out system also results in more consumers using cards they would not choose. That system is not permitted for payroll cards and should not be for government benefit cards either.

While the compulsory use ban is currently limited to wages and public benefits, it should be extended to all cards used for funds in connection with higher education. College cards that are used for government-funded financial aid, work study or employment are already covered, and a clear rule extending to all college cards would protect students and make compliance easier. The abuses of colleges that put revenue sharing ahead of free choice by their students are well documented.

There have also been abuses by prisons that have forced released prisoners to receive money that is owed them on a prepaid card that is full of fees and difficult to use. Those funds may represent wages from a prison job or public benefits that were paid to the prisoner while in prison. Moreover, the money was taken from and is owed back to the releasee, and fees take his or her property without due process or just compensation. Releasees should have a choice of how their money is returned to them, and all choices should enable them to full reimbursement without fees.

We also believe that consumers who are due insurance payments, tax refunds, and any government payment (other than needs-tested benefits paid on an Electronic Benefit Transaction (EBT) card) should have a choice of how to receive their funds. Consumers who are forced to

accept prepaid cards for money owed to them do not have any say in the terms of a prepaid card and have no ability to choose a card that has low fees or is easy to use. As the prison example shows, those cards can come with fees such as high weekly fees that are virtually impossible to avoid.

Notably, for one time payments, it is actually more costly to produce and issue a prepaid card than it is to issue a paper check. That cost is covered by inactivity and other fees that profit the card issuer but bleed consumers. Payment vehicles should not be designed to skim consumers of money they are owed.

4. Account information should be free and convenient.

We support the efforts made in the proposed rule to ensure that consumers have free and convenient access to basic account information, including balances and transaction histories. We appreciate the admonition that no fees may be charged for access to balances by phone or online, for online access to account information, or for requesting paper statements on an ad hoc basis up to once a month.

However, we believe that more is needed to ensure that consumers can manage their accounts easily and without cost. All cards, and not just government benefit cards, should be required to provide balance information at a terminal (ATM) and should offer it for free. Obtaining balance information by telephone is cumbersome and requires inputting a long string of numbers correctly. The cost of ATM balance inquiries should be bundled with the cost of ATM withdrawals in order to encourage access to account balances and simplify fee schedules. Providing free balance information at ATMs will also help limited-English consumers who have difficulty navigating or understanding telephone customer service.

Cards should be required to offer free text messages to check balances as well as low balance and deposit alerts by text, phone and email.

All automated customer service calls should be free (to a toll-free number), not just calls to check the balance. Consumers should also have reasonable access to free live customer service calls in case they have questions or need to discuss a problem.

Account histories should be available online for 24 months, not 18. A consumer doing her taxes on October 15 may need to see transactions earlier than March 15 of the previous year.

Written account histories should be available on request back 7 years, not 18 months. Just like any bank account customer, a prepaid cardholder who uses the card as their primary transaction account could be audited by the IRS, need to show a longer history to apply for a mortgage, or have another reason to look up an older charge.

Consumers should have the option of signing up for monthly paper statements, or an automatic annual statement, rather than having to call each time, for a free or a minimal fee. While we agree that written statements do not need to be provided for all consumers, many consumers do not have computers or smart phones or will otherwise find it more convenient to review their

accounts for fees and unauthorized charges through paper statements rather than by remembering a password and logging in every month. The CFPB's own data shows that consumers do not access their accounts online.

We also urge the CFPB to require foreign language support for customer service calls for balance information, account transactions, dispute rights and other customer service information. As with the short and long form disclosures, customer service should be available in any languages that the card issuer uses in connection with the marketing of or acquisition of a card.

5. Fee disclosures: We support simple, clear uniform fee disclosures with both short- and long-form charts.

We support the proposal to improve fee transparency by requiring all prepaid cards to disclose fees in both short- and long-form charts that are uniform and can be easily compared. We generally support the design of both forms and believe that they will improve competition and help consumers to understand the terms of their accounts. We have a few suggestions below to improve the disclosures.

A. Short form

We support a required short form for all cards, on the outside of packages sold at retail and provided in a conspicuous manner in other settings. We support the basic design of the short form, with the most salient fees – monthly, per purchase, ATM withdrawal, and cash reload – in larger font on top; balance inquiry, customer service and inactivity fees listed below; followed by up to three other fees that are most commonly incurred. We agree that the highest fee possible should be disclosed if there are a range of fees, to warn consumers and prevent evasions and deception. We also applaud the requirement to include the statement: “We charge X more fees not listed here” if not all fees are listed on the short form.

In general, the overall proposed design strikes a good balance between providing as much information as possible without overwhelming consumers, enabling them to find the most critical information quickly and minimizing the potential for evasions. We do have a few suggestions for improving the short form.

Consumers should be able to distinguish between a card that provides a number of free transactions before charging a fee and one that does not. That can be a significant difference between cards, and we fear that omitting that information will weaken incentives to provide free transactions.

Incidence-based fees should be determined based on revenue, not number of incidences, to ensure that the most costly fees, rather than simply the most numerous fees, are included on the short form. It is more important that the form warn consumers about a large fee that impacts a smaller number of consumers (but enough to generate significant revenue) than a very small one that is charged more often.

Stronger information is needed on the short form about overdraft fees, if permitted. As discussed below, we urge the CFPB to ban all overdraft fees and overdraft features on prepaid cards. But if any overdraft features are permitted, the disclosure should be more prominent:

- Overdraft fees should be a required fee listed on the short form labeled as “Overdraft Fee (if enrolled),” whether it purports to be an overdraft fee, transfer fee, load fee, negative balance fee, or any other fee triggered by an overdraft.
- The warning about overdraft and credit features should be more prominent, in bold font.
- There should be two different disclosures, one for cards that permit overdrafts and one for cards that don’t:
 - “This card may charge credit-related fees.” (If no overdrafts are permitted.)
 - “This card may charge overdraft/credit-related fees.” (If overdrafts are permitted.)
- If overdraft fees can increase after the first year, the higher fee should be listed as, for example: “\$15 (\$1 for first year)”. However as discussed below, we urge the CFPB to extend the fee harvester limits beyond the first year to avoid bait-and-switch tactics.
- Overdraft fees are especially important to prepaid cardholders, and both the word “overdraft” and the amount of the fee should be used on the short form.

The overdraft/credit-related fee disclosure should not be required on cards that do not have those features. Most cards do not have overdraft or credit-related features, consumers assume prepaid cards do not, and the disclosure could be confusing. The disclosure will also stand out more starkly on the cards that do have those features when compared to one that does not. Omitting the disclosure will also free up space for a QR code or other information.

The warning about lack of deposit insurance, if deposit insurance is not required, needs to be more prominent and understandable. We urge the CFPB to require deposit insurance, not treat the topic as one for disclosure. But if deposit insurance is not required, we believe that a symbol such as the word FDIC in a circle with a slash through it would be more easily noticed and understood by consumers.

While we appreciate the difficulty of squeezing a lot of information into the short form, we urge the CFPB to experiment with ways to convey the following information on the short form. (We note that if the CFPB takes our suggestion to prohibit overdraft fees and to require deposit insurance, then those are two pieces of information that will not be necessary on the short form, freeing up space.)

- Average monthly cost of the card based on actual usage, enabling consumers to distinguish between cards that may have the same fees but make those fees harder or easier to incur (such as through a small free ATM network or alerts that help consumers avoid fees). While no average will be accurate for all consumers, consumers can see the specific fees they care about based on how they will use the card. Alternatively, the CFPB could rate cards as high, medium and low cost based on their actual fee revenue.
- The number of surcharge-free ATMs, which can differ significantly among cards and impact cost.
- Symbols to indicate cards that offer bill pay or remote deposit capture, key services for unbanked consumers.

Consumers should be able to see all of the fees at retail more easily. We support the proposal to provide a phone number and URL to enable consumers to access the long form. But we believe that the ability to send a text to obtain a link to the long form could be even easier, and also accessible by consumers who have basic phones. The text can be retained for future reference more easily. We also support providing a QR or bar code if it can be fit onto the form. While QR code usage is low today, we believe it will grow.

B. Long Form

We support the proposal to require all cards to provide a long form fee disclosure in addition to the short form. The conditions under which prepaid cards fees can be incurred can be quite complex, and the long form enables consumers to get complete information. We agree that the full long form should always be provided by financial institutions, on websites, by employers, colleges and other non-retail settings.

However, we believe that the long form should also be accessible at retail without resort to a smartphone or long telephone message. We believe that it is possible to design a package – as the Pew Charitable Trusts has done – that can be opened to reveal the long form. At a minimum, cards that charge fees in addition to those disclosed in the short form should be required to provide an easy-to-open flap that lists those additional fees. For example, the statement about those fees could be edited to say: “We charge 7 other fees. Open here to see them. =>”

In addition, the long form should have a section disclosing whether the card carries overdraft fees (if not prohibited, as we urge) or other credit features. The long form should be a comprehensive place to get complete information about the card.

The long form should also disclose the institution’s funds availability policy for cash or checks deposited by ATM, by teller or by remote deposit capture. If one of those options is not available, the form should say “n/a.”

C. Foreign language disclosures

We support the proposal to require both the short and long form disclosures (whether provided on a package, on a website or by telephone) to be provided in any foreign languages that the card issuer principally uses in connection with the acquisition of a card. The same is true if a card is marketed in another language. If an issuer is going to market in a foreign language or otherwise specifically reach out to non-English speakers, it must ensure that it conveys full fee information in that language.

6. Consumers need clear dispute rights.

A. Deadlines should be simplified: at least 120 days

The proposed rule follows the current payroll card deadlines governing when a consumer must submit a dispute about a charge on the account. Those rules are extremely confusing. Consumers are told that, once an unauthorized charge or error appears in their account history, they have 60

days from the time that they either access their account electronically or are sent a written statement. But most consumers probably misunderstand this rule and think that they have 60 days from the date of the transaction. Moreover, under the current rule, if the consumer never sees the charge – as is likely for most prepaid cardholders – their dispute rights still expire in 120 days if the card issuer follows a silent, undisclosed policy of investigating all disputes made within 120 days.

Instead, the CFPB should amend the rule to simply provide prepaid cardholders 120 days from the time the charge is credited or debited to the consumer's account. Most prepaid cardholders do not either receive written statements OR access their accounts electronically, as the CFPB's data reflects. The current rule results in deceptive disclosures and unclear rights. A simple 120 day rule would be easier to publicize, understand, and comply with. At a bare minimum, issuers that take advantage of the 120-day safe harbor should be required to disclose that policy in their agreements and disclosures, rather than the deceptive 60 day deadlines.

We also urge the CFPB to harmonize the Regulation E and Regulation Z dispute rights in the case of a lost or stolen card. Regulation E subjects consumers to up to \$500 in liability if they fail to report a lost or stolen card within two business days of realizing that it is missing, whereas credit cardholders have no deadline and a \$50 liability cap. Most prepaid cards are covered by network dispute rules that follow the credit card rules, and it would eliminate confusion and better protect consumers if Regulation E followed that industry practice.

B. Registration is appropriate, with dispute rights for prior transactions.

We support the proposal to require consumers to register their cards before they may exercise their dispute rights and to permit consumers, once registered, to dispute errors or unauthorized charges that occurred prior to registration. This proposal strikes a balance between protecting consumers and ensuring that fraudsters cannot act anonymously. We also agree that individuals who receive payroll, government benefit, student or other cards that are issued to specific individuals and not anonymously should not need to register their cards before exercising dispute rights.

C. Registered, general purpose gift cards should carry protection from loss or theft.

We urge the CFPB to extend dispute rights to general purpose prepaid cards, even if marketed or labeled as a gift card, that the consumer registers. We agree that there is the potential for evasion of dispute rights if those cards are not covered. Consumers would especially benefit from being able to replace a lost or stolen gift card.

7. We support posting of fee schedules and account agreements on the CFPB's and issuers' websites.

We support requiring prepaid card issuers to provide their terms and conditions and short- and long-form fee schedules to the CFPB for posting on a central CFPB website, and also to post them publicly on the issuers' websites. The fee schedules should be searchable separately from the longer terms and conditions. The text should be machine readable, and the fee schedules

should be searchable not only by issuer name but also by the name of the program manager, employer, school or other branding entity.

8. We support providing basic Regulation E protection to prepaid cards and prepaid payment systems, broadly defined, but also to cards for needs-tested benefits and health/flexible spending.

We support the broad definition of “prepaid card,” which encompasses general use reloadable cards, payroll cards, student cards, public benefits cards and many other types of cards, stored value accounts, and mobile or online equivalents. As payment systems evolve, it is especially important not to have a narrow definition that permits evasions. We support the proposal to cover mobile prepaid accounts and other emerging payment systems when they hold consumer funds, such as PayPal and person-to-person accounts. While pass-through devices like Google Wallet need not be covered if they are not storing funds, consumers need basic fee disclosures and error protections when their funds are held in accounts with entities not currently covered by Regulation E. Virtual currencies should not be outside the rule’s protections if they are used for consumer purposes. We also support the proposal to prevent evasions by general-use reloadable cards that are marketed or labeled as gift cards.

Nonetheless, there remain gaps in the proposed scope. We urge the CFPB to extend the protections of Regulation E to:

- Prepaid cards used for needs-tested benefits. The CFPB can narrow the exemption in the EFTA for electronic benefits transactions to the intended target: EBT cards. Prepaid cards did not exist in 1996 when Congress passed the EBT exemption. While most states still pay needs-tested benefits such as Temporary Aid for Needy Families on EBT cards, some are moving cash-based benefits to prepaid cards (sometimes called Electronic Payment Cards or EPC). Prepaid cards are more vulnerable to fraud and unauthorized charges than are EBT cards, and the extremely low-income users of these cards especially would benefit from the proposed protections.
- Health and flexible spending cards. We oppose an exemption for cards used for health benefit accounts and flexible spending programs. These cards can carry significant amounts of funds, up to several thousand dollars. We are aware of no reason why the cards could not comply with or benefit from the proposed protections. Consumers who use these cards also need fraud protection, error resolution and dispute rights, free access to account information, and protection from predatory credit products (sometimes aimed at dental and other medical expenses), among other protections.
- College prepaid cards that purport to be bank accounts. The proposed rule appropriately includes prepaid cards used by colleges. However, some college card programs purport to be individual bank accounts, outside the proposed rule, but are run by nonbanks like Higher One, are card-based, and are prepaid cards in all but name. While these cards are covered by Regulation E, students using these cards should have the clear fee disclosures, protections governing overdraft and credit features, free access to account information, and other additional protections of the proposed prepaid card rules.

9. The CFPB should prohibit forced arbitration and class action bans.

The CFPB's study found that forced arbitration clauses and class action bans are rampant in prepaid card agreements. Forced arbitration clauses deny consumers access to justice and force them to raise disputes in a secretive, biased and lawless forum. Arbitrators have an incentive to rule for the company that is in a position to bring them repeat business, not for the consumer. Arbitrators do not need to follow the facts or the law and their decisions are unreviewable. Forced arbitration clauses are not an alternative system of justice; they are a method of suppressing claims and denying access to justice altogether.

Arbitration clauses are increasingly paired with class action bans that prevent either the arbitrator or a court from ordering a company that engages in widespread violations to compensate all of its victims. Class action bans make it impossible to pursue small claims and keep millions of consumers in the dark about legal violations that injure them. The CFPB should ban forced arbitration clauses and class action bans in prepaid card contracts.

Thank you for the opportunity to submit these comments and for your work to protect consumers who use prepaid cards. For questions, please contact policy analyst Rebecca Thiess at thiess@ourfinancialsecurity.org or 202-973-8005.

Sincerely,

Americans for Financial Reform
Arizona Consumers Council
Arkansans Against Abusive Payday Lending
Arkansas Community Organizations
California Reinvestment Coalition
Center for Economic Integrity
Center for Economic Integrity
Center for Economic Integrity - New Mexico Office
Center for Responsible Lending
Chicago Consumers Coalition
Chinese American Service League
Consumer Action
Consumer Action
Consumer Assistance Council Inc. (Cape Cod, Mass)
Consumer Federation of America
Consumers Council of Missouri
Consumers Union
Corporation for Enterprise Development
Florida Alliance for Consumer Protection
Florida Alliance for Consumer Protection
Georgia Watch
Greater Southwest Development Corporation
Heartland Alliance for Human Needs & Human Rights
Illinois Asset Building Group
Illinois Public Interest Research Group
Kentucky Equal Justice Center

Kingdom Community Inc.
Law Foundation of Silicon Valley
Mark E. Budnitz, Professor of Law, Emeritus, Georgia State University College of Law
Maryland Consumer Rights Coalition
Massachusetts Consumers Council
MassPIRG
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Council of La Raza
New Economy Project
New Jersey Citizen Action
New Jersey Citizen Action
Northwest Side Housing Center
Project IRENE
Public Citizen
Public Justice Center
Reinvestment Partners
SC Appleseed Legal Justice Center
SC Appleseed Legal Justice Center.
The Leadership Conference on Civil and Human Rights
US PIRG
Virginia Citizens Consumer Council
Virginia Poverty Law Center
Washington Statewide Poverty Action Network
Woodstock Institute

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International

- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development

- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)

- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network

- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- UNET

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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

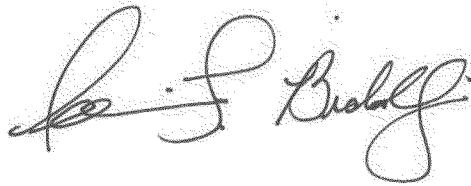
include a product that can never store funds, such as digital wallet that only holds payment credentials for other accounts.”).

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 black ink, appearing to read "A. T. Biddings". The signature is fluid and cursive, with a large initial "A" and "T" followed by the name "Biddings".

Adrienne T. Biddings
Policy Counsel



March 23, 2015

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

Re: Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) (Docket No. CFPB– 2014– RIN08170-AA22)

Ladies and Gentlemen:

The Online Lenders Alliance (“OLA”) respectfully submits this comment letter in response to the Consumer Financial Protection Bureau’s (“Bureau”) notice of proposed rulemaking (“NPRM”) Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z).¹

The OLA represents the online consumer short-term lending and related products and services industry. Our members include online lenders, as well as vendors and service providers to lenders, such as consumer reporting agencies and lead generators. The OLA and its members support the adoption of strong consumer protections for the prepaid industry based on principles of consumer choice, transparency, and access to financial products and services. In this spirit, the OLA and its member companies have agreed to Best Practices and a Code of Conduct that goes beyond compliance with existing legal requirements to ensure that consumers are fully informed and fairly treated when using short-term lending products.²

While the OLA supports the Bureau’s mission to promote consumer protections in the prepaid market, we are concerned that the scope and breadth of the NPRM has the potential to stifle innovation and limit consumer access to these important financial products and services. In particular, we are concerned that the proposed rules on overdraft and credit features would effectively make offering these services in connection with prepaid accounts cost-prohibitive or inconvenient for consumers. This would have a significant adverse impact on the millions of unbanked and underbanked consumers in the United States who value these services in connection with prepaid accounts.

An important aspect of the Bureau’s statutory mission is to facilitate consumer access to financial products by promoting innovation and competition in the market.³ This aspect of the

¹ 79 Fed. Reg. 77102 (proposed Dec. 23, 2014) [hereinafter NPRM].

² OLA, Best Practices, <http://www.onlinelendersalliance.org/?page=BestPractices>.

³ 12 U.S.C. § 5511.



Bureau' mission is especially critical for unbanked and underbanked consumers, who often have less access to financial products and services. Accordingly, our comments below seek to assist the Bureau in developing common-sense regulations that preserve consumer access to credit while protecting consumers by requiring prepaid accounts and related services to be marketed in a transparent and understandable manner.

THE OLA' COMMENTS TO THE PROPOSED RULE

Prepaid accounts provide cost-effective and flexible payment options for consumers, particularly the millions of consumers who lack access to a bank account or credit card.⁴ The growth of prepaid accounts over the past several years reflects the fact that consumers value the convenience and flexibility of prepaid accounts. And, as the popularity of prepaid accounts has grown, the industry has responded with a number of consumer protections, such as fee disclosures, opt-in for overdraft protection, and cooling-off periods during which overdraft services are suspended (*e.g.*, limiting the number of overdrafts available within a specific time period). The OLA and its members support these voluntary developments, which are consistent in spirit with the OLA' Best Practices and Code of Conduct for short-term lending.

Another important aspect of the prepaid market is the offering of overdraft and other credit features in connection with prepaid accounts. These services expand access to credit for consumers who rely on prepaid accounts as their primary payment mechanism and choose to use their accounts to access overdraft or credit features. The OLA' members, for example, may partner with a bank or prepaid program manager to offer short-term credit through an account advance feature, a loan that is loaded to the account, or through an overdraft service that ensures the consumer has access to funds in a financial emergency.

In particular, consumers rely on short-term loans when they have unexpected expenses or emergencies, such as healthcare bills, utility bills, or a loss or reduction of income. A lack of access to short-term lending can cause significant hardship for consumers, such as bounced checks, disconnected utilities, or the inability to pay for medical expenses or other necessities. Restricting short-term lending “~~could~~ consumer access to credit, limit their ability to maintain formal credit standing, or force them to seek more costly alternatives”⁵ For example:

without credit a broken-down car may not be repaired, at least for a while. Without transportation to work, the consumer could lose significant income, possibly a job, and almost certainly the ability to manage normal daily activities. Missed car payments that lead to repossession could have the same effects. A payday loan might also be the only reasonable option to provide for basic needs. For example, missed utilities payments can lead to disconnected services. At a less-essential level, a lack of access to credit may keep a small business owner from meeting

⁴ According to the Federal Deposit Insurance Corporation, “~~10~~ five or 24 million households were underbanked in 2013, consisting of an estimated 68 million people.” www.fdic.gov/news/news/press/2014/pr14091.html.

⁵ Kelly D. Edmiston, Fed. Reserve Bank of Kan. City, *Could Restrictions on Payday Lending Hurt Consumers*, 37 (2011), available at <http://www.kc.frb.org/publicat/econrev/pdf/11q1Edmiston.pdf>.



unexpected expenditures or short-term revenue shortfalls. Payday loans are simple and convenient for consumers to use.⁶

The OLA is concerned that the NPRM' sweeping restrictions for the prepaid industry have the potential to limit consumer access to these important products and services, including prepaid products that include overdraft or credit features. We believe that the best approach is to ensure that prepaid products are marketed to consumers in a clear and straightforward manner, allowing consumers to make informed decisions in managing their finances. As noted by Director Cordray, the Bureau "recognizes the need for emergency credit" and that the "right approach [is] to protect consumers and ensure that they have access to a small loan market that is fair, transparent, and competitive."⁷

We agree that the millions of consumers who choose to use prepaid products should have the same choices when it comes to financial services as consumers who choose to use more traditional payment mechanisms. We therefore encourage the Bureau to ensure that the proposed rules – particularly those related to overdraft and credit – do not deny consumers access to important financial products and services.

1. The NPRM' Broad Definition of Prepaid Account Is Likely to Stifle Innovation in the Market.

The OLA is concerned that the NPRM' broad definition of prepaid account is likely to have an adverse impact on innovation and the use of technology in the prepaid market. We therefore encourage the Bureau to limit the scope of the final rule to general purpose reloadable ("GPR") cards as was originally proposed in the Bureau' announced notice of proposed rulemaking ("ANPR").

The NPRM defines a prepaid account as including "cards, or other devices capable of being loaded with funds and usable at unaffiliated merchants or for person-to-person transfers, and are not gift cards (or certain other related types of cards)."⁹ The proposal covers GPR cards, payroll cards, government benefits cards, mobile and other electronic prepaid accounts, tax refund cards, campus prepaid cards for students, peer-to-peer payment products, and other similar products.¹⁰

The Bureau' proposed definition of "prepaid account" freezes the industry based on today' market and then imposes sweeping rules that will have unforeseeable consequences on

⁶ *Id.* at 37-38.

⁷ Remarks by Richard Cordray at the Payday Loan Field Hearing in Birmingham, AL (Jan. 19, 2012), available at <http://www.consumerfinance.gov/newsroom/remarks-by-richard-cordray-at-the-payday-loan-field-hearing-in-birmingham-al/>.

⁸ 77 Fed. Reg. 30923 (May 24, 2012).

⁹ NPRM at 77102, 77208.

¹⁰ NPRM at 77132– 33.



the development of new products and services for consumers. The OLA fears that the Bureau's definition of "prepaid" will stifle the continued development of these innovative and exciting new products and services. At a minimum, the definition of "prepaid" should exclude digital wallets, peer-to-peer services, and other developing mobile technologies. These products and services are continuing to develop and overly burdensome regulations at this early stage could limit future innovation to the detriment of consumers.

2. The OLA Supports Disclosures for Prepaid Cards but Recommends Modifications to the Bureau's Proposal.

The OLA supports the Bureau's proposal to establish short and long form disclosures for prepaid accounts. We agree with the Bureau's goals of increasing transparency in the market so that consumers can make informed decisions when acquiring and using prepaid products. The OLA, for example, has published Best Practices for the short-term lending industry that require disclosure of all loan terms in a transparent and easy to understand way. We encourage the Bureau to review its proposed short form disclosures to ensure that the most important information is provided to consumers in a manner that consumers will notice and understand. Our concern, as shared by the Bureau, is that consumers can become overwhelmed when provided too much information, and that overly complex disclosures in connection with prepaid accounts might limit the ability of prepaid issuers to provide other relevant information (such as usage instructions).¹¹

We therefore suggest that the short form not require any disclosures related to overdraft or credit fees as these services are not automatically included with a card and may only be set up with express consumer consent. Rather, information on overdraft and credit fees should be provided to consumers when they are first offered the service. Otherwise, consumers are likely to be confused by disclosures on packaging related to services that they may never be offered or that the consumer may never seek to use. In this regard, the Bureau acknowledges that "receiving information about credit features on the short form disclosure might be confusing to consumers . . ."¹² The Bureau's own "consumer testing . . . indicated that when participants were shown prototype short forms, most understand that they represented only a subset of fee information and that they could potentially be charged fees not shown on the form."¹³ Moreover, the Bureau has proposed that all consumers receive a comprehensive long form disclosure in connection with opening a prepaid account, which gives the Bureau flexibility to further narrow the short form disclosure to focus on the account features and fees that are of most immediate relevance to consumers.

¹¹ *Id.* at 77150.

¹² *Id.* at 77164. We believe, for example, that including a disclosure on product packaging that "[c]ards may charge credit-related fees," *see id.* at 77309, is likely to confuse consumers when they are shopping for cards and before any such service is even available.

¹³ *Id.* at 77157.



3. The NPRM' Compulsory Use Proposal Has the Potential to Limit Consumer Access to Short-Term Lending through Prepaid Cards.

The Bureau should reconsider the proposed compulsory use provision for prepaid accounts, which has the potential to limit consumer choice and deny consumers – particularly the underbanked – access to an important source of credit. At a minimum, the Bureau should clarify that under Regulation E prepaid accounts may offer incentives to consumers to encourage repayment by recurring, preauthorized electronic fund transfers.¹⁴

Regulation E prohibits any person from conditioning the extension of credit to a consumer on the consumer' agreement to repay the credit by preauthorized electronic fund transfer.¹⁵ The regulation exempts from the prohibition credit extended under an overdraft credit plan or to maintain a minimum balance in the consumer' account.¹⁶ The NPRM, however, does not extend the Regulation E exemption for overdrafts to prepaid accounts; such accounts would be required to offer consumers a means to repay their outstanding credit balances other than by automatic repayment.¹⁷

The NPRM fails to recognize that the proposed compulsory use restriction, which imposes a heightened regulatory burden on prepaid accounts as compared to other financial products under Regulation E, has the very real potential to limit consumer access to overdraft and credit features. The potential impact on consumers is magnified when the compulsory use provision is combined with the other Regulation Z requirements that the Bureau has proposed for prepaid accounts (discussed below). Moreover, the potential adverse impacts of the proposed rule are likely to be felt most immediately by those consumers who lack formal bank accounts or access to other financial services and rely on a prepaid account as their primary financial instrument.

The OLA supports making overdraft and credit-linked prepaid products reasonably and conveniently available to consumers. In addition, the OLA believes that the Bureau should not place prepaid products at a competitive disadvantage by imposing more restrictive requirements on prepaid products than are currently in place for other products under Regulation E, especially since the Bureau has acknowledged the importance of prepaid products to millions of consumers.¹⁸

¹⁴ *Id.* at 77277, n.493.

¹⁵ 12 C.F.R. §1005.10(e)(1).

¹⁶ *Id.*

¹⁷ NPRM at 77133.

¹⁸ *Id.* at 77211.



4. The NPRM' Application of Regulation Z' Lending Restrictions to Prepaid Cards Will Limit Consumer Access to Short-Term Lending.

The NPRM proposes to extend a number of Regulation Z' credit requirements to prepaid accounts that include an overdraft or credit feature. The OLA is concerned that these requirements would impair the convenience and flexibility of prepaid products, especially since consumers look to prepaid products as a faster, more convenient alternative to credit cards. Specifically, many of these restrictions appear to target short-term lending in connection with prepaid accounts. The Bureau' proposed compulsory use and offset prohibitions, for example, will effectively deny consumers the ability to access short-term credit in connection with prepaid accounts.

In this regard, we note that the NPRM' cost-benefit analysis does not appear to include any studies or data that address the extent to which the proposed rules might impact the ability of consumers to access overdraft and other short-term credit features. Given the Bureau' statutory mission to ensure consumer access to credit, we suggest that the Bureau revise the proposed credit provisions to ensure that they do not limit consumer access to overdraft and credit features in connection with prepaid accounts.¹⁹

A. Regulation Z 30-Day Waiting Period.

The NPRM' proposal to prohibit a prepaid account from allowing a consumer to access credit until 30 days after the account has been registered will deny prepaid users access to credit at the very time when they are most in need of emergency funds. As noted in the NPRM, many of the consumers who submitted comments to the ANPR "voiced support for [prepaid overdraft services], stating that the overdraft fee charged by their prepaid products was less than the overdraft fees charged by banks, allowing them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs."²⁰ We believe that the practical impact of the proposed rule will be to limit consumer choice and access to overdraft services and other credit features.

According to the NPRM, the Bureau has proposed the Regulation Z issuance rules for prepaid accounts "ensure that consumers understand that they are not required to request any credit feature in order to register and use a prepaid account."²¹ If that is the Bureau' concern, then we suggest a better approach would be to require prepaid issuers and creditors to provide appropriate disclosures and information to consumers so that consumers have the freedom to make their own decisions on when to access credit. The OLA' members believe that consumers are in the best position to determine when and how to use their prepaid accounts, and that the Bureau can promote consumer choice by applying more flexible issuance rules to prepaid

¹⁹ Section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of a regulation to consumers, including the potential reduction in access by consumers to financial products and services. *See id.* at 77256, n.392.

²⁰ *Id.* at 77205.

²¹ *Id.* at 77137.



accounts. This is particularly important given that many consumers seek short-term credit in response to emergencies or unexpected reductions in income. For consumers facing such emergencies and who rely on prepaid accounts, the ability to access credit quickly and conveniently can mean the difference between repairing a vehicle or having to sell it to make ends meet. The Bureau' final rule should support consumers by ensuring that they have access to short-term funds rather than making such funds cost-prohibitive or unavailable.

B. Regulation Z Offset Prohibition.

The Bureau' proposed rule explains that “ ~~overdraft~~ of credit, overdraft services, and similar credit features offered in connection with a prepaid account satisfy the definitions of (1) credit; (2) open-end (not home-secured) credit plan; and (3) credit cards under [the Truth-in-Lending Act (TILA)] and Regulation Z.”²² Thus, the proposed rule generally treats overdraft, advances, and other forms of credit accessed by a prepaid card as “ ~~open credit~~” under TILA and Regulation Z. By way of background, Regulation Z currently prohibits credit card issuers from offsetting a cardholder' indebtedness arising from a consumer credit transaction against “ ~~the~~ cardholder held on deposit with the card issuer,” unless authorized in writing by the cardholder, in which case the card issuer may *periodically* deduct the cardholder' indebtedness from a deposit account held with the issuer.²³

Under the proposed offset rule for prepaid accounts, however, “ ~~issuers~~ could only move funds automatically from an asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt *no more frequently than once per month*, such as on the payment due date, and only pursuant to the consumer' signed, written agreement that the issuer may do so.”²⁴ In other words, a creditor would only be permitted to debit funds once per month from a prepaid account with the consumer' authorization. Thus, the Bureau has narrowly interpreted Regulation Z' offset provision in the prepaid context in a way that effectively cuts off consumer access to short-term credit with a due date of less than one month.

The Bureau, however, acknowledges that neither TILA nor Regulation Z define the term “ ~~periodically~~” purposes of the offset prohibition. The Bureau' rationale for interpreting “ ~~periodically~~” mean no more frequently than once per month is that some issuers may attempt to obtain a consumer' written authorization “ ~~deduct~~ all or part of the cardholder' credit card debt on a daily or weekly basis . . . to help ensure that the debt is repaid.”²⁵ The OLA respectfully believes that the Bureau' interpretation of “ ~~periodically~~” once per month is arbitrary²⁶ – the unstated message, it would seem, is that the Bureau does not support short-term credit in connection with prepaid accounts. Such credit, however, provides an important service,

²² *Id.* at 77205.

²³ *See generally* 12 U.S.C. § 1026.12(d).

²⁴ NPRM at 77209 (emphasis added).

²⁵ *Id.* at 77239.

²⁶ The Bureau does not adequately explain why it applied a one month limitation in place of a shorter time period.



and the proposed rule should not impose temporal limitations that would have the practical effect of denying consumers access to short-term credit.

C. Proposed Fee Cap for Prepaid Products under Regulation Z.

The OLA strongly encourages the Bureau to remove the 25% fee cap from the final rule, or to include broader exemptions (such as for cash advance) that are more appropriately tailored for prepaid account usage. The Bureau' proposed limits on charging fees in connection with credit will likely make it cost-prohibitive for issuers to provide overdraft and other credit services. As a result, the NPRM would deny consumers access to these services, which would have a disproportionately harsh impact on underbanked consumers who rely on prepaid accounts as their primary financial product.

The prohibition on charging fees in excess of 25% of the total amount of credit authorized upon account opening was designed to address a specific concern involving subprime credit cards.²⁷ Given the differences between credit cards and prepaid cards, the OLA suggests that the Bureau reconsider application of Regulation Z' fee cap to prepaid accounts, particularly as many consumers may seek to use their accounts as a way to access short-term credit. The proposed fee cap will likely limit the ability of consumers with short-term liquidity needs to access credit features that are simple, quick, and convenient. Consumers who use short-term loans do so knowing that they may have to pay higher fees. As noted, the OLA has established Best Practices to ensure that consumers are provided disclosure of all loan terms in a transparent and easy to understand way. For these reasons, short-term credit should not be subjected to the same regulatory limits as have been developed for credit cards.

D. Other Regulation Z Credit Requirements.

Finally, the NPRM proposes to apply a number of Regulation Z' requirements to prepaid accounts that will negatively impact the convenience and flexibility of prepaid products, especially since consumers use prepaid products as a faster, more convenient alternative to credit cards. The OLA encourages the Bureau to review the potential costs and benefits of these rules to confirm that they will not adversely impact the ability of consumers to use their prepaid accounts to obtain overdraft and related credit features. These restrictions include:

- Requiring an ability-to-repay analysis before approving credit or overdraft;
- Requiring that consumers have at least 21 days to repay amounts associated with a credit feature prior to assessing any late fees, together with a requirement that such fees be “reasonable and proportional” to the account violation;
- Restricting increases on interest rates applicable to the use of a credit feature, unless the cardholder has missed two consecutive payments; and

²⁷ *Id.* at 77247.



- Requiring a 45-day advance notice of any interest rate increases so that the consumer may cancel the credit feature.

The OLA and its members believe that these requirements will make it difficult, if not impossible, for prepaid accounts to offer overdraft and similar credit services to consumers. As acknowledged by the Bureau, however, short-term credit serves an important role for consumers who need access to emergency funds. We therefore suggest that the Bureau narrow these restrictions so that consumers are able to use their prepaid accounts to access credit. We also suggest that the Bureau clarify whether the lender that establishes the credit line or the prepaid account provider is responsible for complying with the proposed rule's credit and related disclosure requirements.

5. The NPRM Does Not Provide the Industry with Sufficient Time to Implement the Proposed Rules.

The OLA and its members are concerned that the NPRM does not provide the prepaid industry and its service providers sufficient time to prepare for and implement the sweeping changes proposed in the rule. The OLA's members have heard from their prepaid business partners that the NPRM does not provide adequate time for the industry to review the new requirements, revise internal work flows, approve new compliant products and packaging, work with manufacturers to build inventory, and advertise and market the new products. The disclosure requirements, alone, will require several months for issuers to design, review, and approve new compliant products and packaging. From there, it will take additional time and effort for manufacturers to build inventory and for issuers to advertise and market the new products. At the same time, computer systems will need to be upgraded to ensure that the required disclosures are available online, incorporated into telephone scripts, etc.

Moreover, the prepaid industry needs time to work with the various industries that rely on prepaid products – such as the short-term lending industry – to coordinate in developing compliant products and services. It is simply unreasonable, and ultimately unworkable, for the Bureau to propose a sweeping overhaul of an industry within nine months. We suggest that a more reasonable approach would be to provide an 18-month implementation timeline. This will not only provide the industry sufficient time to comply with the rule, but will also allow the industry to assess any additional requirements that may impact prepaid accounts in future Bureau rulemakings.

* * * * *



The OLA appreciates the opportunity to comment on the Bureau' ~~proposed~~ rulemaking for prepaid accounts. We look forward to working with the Bureau to develop final rules that establish important consumer protections without stifling innovation in the market or consumer access to overdraft and credit features.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa McGreevy".

Lisa McGreevy
President and CEO
Online Lenders Alliance



Brian J. Stiger
Director

**COUNTY OF LOS ANGELES
DEPARTMENT OF
CONSUMER AND BUSINESS AFFAIRS**

Members of the Board

Hilda L. Solis
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Don Knabe
Michael D. Antonovich

"To Enrich Lives Through Effective and Caring Service"

March 23, 2015

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552
Electronic address: <https://www.federalregister.gov/articles/2014/12/23/2014-27286/prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth-in-lending-act>

**RE: Comments on proposed prepaid card amendments to Regulation E,
Docket No. CFPB-2014-0031 or RIN 3170-AA22**

Dear Ms. Jackson,

The County of Los Angeles, Department of Consumer and Business Affairs ("DCBA") is pleased that the Consumer Financial Protection Bureau ("CFPB") is considering potential changes to the Electronic Fund Transfer Act and the Truth in Lending Act. We appreciate the opportunity to comment on the proposed amendments to Regulation E and Regulation Z.

As a government organization, DCBA's mission focuses on promoting a fair and vibrant marketplace through service to consumers, businesses and communities by providing education, advocacy and complaint resolution services.

DCBA commonly assists consumers with a variety of complaints relating to the use of pre-paid debit cards. According to a survey conducted by the FDIC, as of 2011, 1 in 4 households were either unbanked or underbanked, conducting some or all of their financial transactions outside of the mainstream banking system.¹ It is reported that there are approximately 30 million of these unbanked and underbanked households in the United States. These consumers are more likely than the general population to use prepaid products.

Prepaid cards are popular with a large portion of the population because they do not require a credit check or minimum funds to open an account. Therefore, consumers who often have few other options will turn to prepaid debit cards. Currently, prepaid

¹ Burman and Osaki, "2011 FDIC National Survey of Unbanked and Underbanked Households," September 2012, accessed on March 18, 2015 at https://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf

March 23, 2015

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debit cards have limited protections under federal consumer financial law. DCBA supports the CFPB's proposal to strengthen consumer protection laws by ensuring that prepaid cards are safe, transparent, and free provisions to confuse or trap consumers.

I. Proposed Changes

The CFPB has proposed an effective prepaid card rule that provides important protections for consumers.

DCBA often receives complaints from consumers who have been defrauded by scammers who use pre-paid debit cards as a medium for payments that can go untracked. Additionally, DCBA receives complaints when consumers, attempting to use newly purchased prepaid debit cards, are told there are no funds available on the card. The rules proposed by the CFPB would help protect consumers against unauthorized withdrawals such as these.

A. Prepaid Cards Receive Same Fraud Protections As Debit Cards

The CFPB is proposing to modify Regulation E to adopt error resolution and limited liability provisions specific to pre-paid accounts. Currently, Regulation E limits consumers' liability for unauthorized transfers provided the consumer notifies their financial institution in a timely manner. The financial institution is then required to resolve certain errors in covered accounts. The CFPB is proposing to extend this protection to prepaid accounts. Prepaid products can be sold to consumers online, and may not be tied to a physical card or device. This makes the products accessible and usable online or at a physical location through a mobile device such as a smartphone. Therefore, the proposed changes would extend protections to peer-to-peer payments such as PayPal, Venmo, and Google wallet, which DCBA supports.

DCBA believes that all prepaid cards, including payroll, student and public benefit cards – and also mobile and virtual prepaid payment systems like PayPal and others – need rules that include: protection from loss, theft and unauthorized charges; simple, clear disclosures of fees and other important information; and convenient, free access to balances and account information. The proposed rule extends the protections of Regulation E to most prepaid cards, with a broad definition of those accounts to prevent evasions and protect virtual prepaid payment systems.

The error resolution and limited liability provisions would not cover unregistered prepaid accounts under the proposed changes. DCBA also suggests adding fraud protections to unregistered prepaid account as not all consumers are able to register their account before fraudulent acts are committed. DCBA supports the proposed rule extending the protections of Regulation E. Many prepaid cardholders live paycheck to paycheck, and

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their funds need to be safe to pay for necessities first.

B. Clear Disclosures

DCBA believes strongly that consumers should be able to see the full list of fees more easily before buying a card. The CFPB's proposal would require that financial institutions make certain disclosures available to consumers before a consumer agrees to acquire a prepaid account. Disclosures would be in two easy to understand forms, one short and one long. The short form would highlight key fees consumers should know about prior to acquisition; the second would be a long form that would set forth all prepaid account fees and the conditions under which those fees could be imposed.

Fees associated with pre-paid debit cards, including overdraft fees, should be clear and easily understood. The rule would require that a simple chart of most fees be provided on the outside of the package with more details on a longer chart inside. Consumers should be able to easily see all fees before buying a card. This proposed rule would enable consumers to educate themselves, in short form and in long form, as to all fees that apply with each pre-paid debit card. Consumers can then make more informed decisions, and these disclosures would eliminate unforeseen or hidden fees.

The proposed rule would also include provisions that would require prepaid account issuers to post prepaid account agreements on the issuers' websites and to submit those agreements to the CFPB for posting on a website maintained by the CFPB.

DCBA supports increased transparency through clearer fee disclosures for consumers and through the publishing of these disclosures and account agreements on an easily accessible public website. Providing all prepaid card agreements, including payroll and college cards, on a public website will encourage comparison shopping which benefits consumers. Additionally, DCBA would encourage the CFPB to strengthen this change by requiring all potential fees posted to be card specific instead of generic or general. There should be clear and specific designations as to whether a prepaid account allows overdraft and what fees would be incurred. The card fees and disclosures need to be included on the short and long form disclosures.

C. Free Access to Balances

Consumers need convenient, free access to balances, customer service and account transactions. Many consumers who turn to prepaid debit cards do so because they do not have the means to access traditional lines of credit. DCBA has assisted consumers who report that they use prepaid debit cards in lieu of opening a bank account or credit card. The proposed rule provides consumers with additional protections by providing free access to balances and transactions by telephone and online, and with free paper

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statements when requested.

DCBA recommends that ATM balance inquiries and assistance through customer service should also be provided to the consumer free of charge. Regular paper statements should be available as an opt-in option as well.

II. Conclusion

DCBA supports the proposed changes as outlined above to both Regulation E, the Electronic Fund transfer Act, and Regulation Z, the Truth in Lending Act, and believes these changes will benefit consumers. DCBA supports the CFPB in adopting the proposed changes, as these changes would give consumers a higher level of protection against fraud, increased transparency when acquiring a prepaid debit card, and access to account balances.

DCBA appreciates the opportunity to comment on the proposed changes to Regulation E and Z and the marked improvements to the Prepaid Card Rule. DCBA is available to provide additional information should the CFPB have additional questions. We applaud the CFPB's efforts and support its proposed amendments as outlined in the proposed rule.

If you have any questions or need additional information please contact Caroline Torosis at (213) 974-1452.

Sincerely,

A handwritten signature in cursive script that reads "Brian J. Stiger".

Brian J. Stiger
Director

As of:
February
20, 2020
Received:
March 29,
2015
Status:
Posted
Posted:
March 29,
2015
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No. 1jz-
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Due: March
23, 2015
Submission
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PUBLIC SUBMISSION

Docket: CFPB-2014-0031

Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)

Comment On: CFPB-2014-0031-0001

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)

Document: CFPB-2014-0031-3820

PayPal Comment Letter on Prepaid Rule - FINAL (03-23-2015)

Submitter Information

Name: John Muller

Organization: PayPal, Inc.

General Comment

See Attached

Attachments

PayPal Comment Letter on Prepaid Rule - FINAL (03-23-2015)



2211 North First Street
San Jose, CA 95131
paypal.com

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. The Bureau should amend § 1005.2(b)(3) so that digital wallets are not considered “prepaid accounts” under the Rule.

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

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 all 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. 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.**

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,

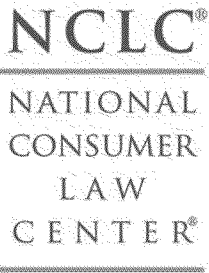

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March 23, 2015

Submitted electronically

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

Re: Comments on Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), Docket No. CFPB-2014-0031, RIN 3170-AA22

Thank you for the opportunity to submit the attached comments on the rules proposed by the Consumer Financial Protection Bureau (CFPB) to protect prepaid cards. These comments are submitted by National Consumer Law Center, on behalf of its low income clients.

We support the CFPB's proposal to extend to prepaid cards the critical protections of Regulation E. We also applaud the CFPB for going farther, not just extending Regulation E but strengthening it. The proposal is a strong one that will enhance consumer confidence in prepaid cards and be a win-win for both consumers and the prepaid industry. However, we urge the CFPB to tighten the rules to prevent evasions and to ensure that consumers are fully protected.

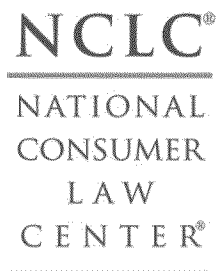
A summary of our comments is provided on pages 1-4, with more details in the pages that follow.

Thank you once again.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren K. Saunders", is written over a horizontal line.

Lauren K. Saunders
Associate Director



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Comments of

**National Consumer Law Center
(on behalf of its low income clients)**

to

Consumer Financial Protection Bureau

**Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E)
and the Truth in Lending Act (Regulation Z)**

**Docket No. CFPB-2014-0031
RIN 3170-AA22**

Submitted March 23, 2015

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I. Introduction and Executive Summary

Thank you for the opportunity to comment on the rules proposed by the Consumer Financial Protection Bureau (CFPB) to protect prepaid cards. These comments are submitted by National Consumer Law Center® (NCLC®), on behalf of its low income clients.¹

The prepaid card market has shown explosive growth over the past several years and is projected to continue growing. Prepaid accounts have filled an important niche in the payment system. They provide access to electronic payments for unbanked and underbanked individuals who have had trouble with overdraft fees and credit products. For other consumers, prepaid cards are a safe way to control spending and make internet purchases. Employers, government agencies and others use prepaid cards to deliver recurring payments in a fast, safe and efficient manner.

Yet gaps in older consumer protection laws written before prepaid cards were developed have left many cards without clear and enforceable protections. Consumers have uncertainty about the safety prepaid cards. Others assume erroneously that the cards carry the same protections that bank account debit cards do.

We support the CFPB's proposal to extend to prepaid cards the critical protections of Regulation E. We also applaud the CFPB for going farther, not just extending Regulation E but strengthening it. The proposal is a strong one that will enhance consumer confidence in prepaid cards and be a win-win for both consumers and the prepaid industry.

Adherence to the following principles will create a safer, fairer and stronger prepaid card market. In each of these areas, the proposed rules advance consumer protections. We also have suggestions in each area for further refinements to close loopholes, bolster safety, and enhance consumer choice.

The proposed rules help to keep credit separate, honest and affordable. But loopholes remain and prepaid cards should be prepaid, without overdraft fees. Prepaid cards must remain true to their essential nature so that they will be safe for the millions of sometimes vulnerable consumers who use the cards, as well as for others who turn to prepaid cards as a way to control spending and make payments safely.

The proposal generally helps to separate credit accounts from prepaid cards. We support the proposal to require credit accessed through prepaid cards to comply with credit card laws, including rules that ensure ability to pay, limit first year fees, give consumers control over how and when to repay, and require penalty fees to be reasonable. However, we urge the CFPB to:

¹ Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications, including Consumer Banking and Payments Law; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. These comments were written by Lauren Saunders, Associate Director.

- Apply credit card laws to any credit line that is likely to use a prepaid card as an access device, not just one linked to a particular card specified by the creditor;
- Limit “fee harvester” fees beyond the first year and limit pre-account opening fees;
- Prevent overdraft features and ensure that consumers affirmatively choose when to use credit;
- Extend the waiting period before a credit feature can be added to a prepaid card to 90 days instead of 30;
- Ban all declined transaction fees;
- Apply Regulation Z to health account, “gift,” or other cards that are exempt from Regulation E if they have credit features.

Prepaid accounts must carry deposit insurance and protection from insolvency; disclosure is not enough. The CFPB proposes to warn consumers about the lack of deposit insurance. But safety is not a matter of disclosure. FDIC insurance not only protects consumers from bank failure, but also ensures that funds are set up in custodial accounts in a depository institution where they are protected from the prepaid company’s creditors and examined by bank regulators for compliance with consumer protection rules. Any account that can hold more than \$500 or accept direct deposits of wages, benefits or other essential income is a deposit account and a bank account substitute, which should be required to carry deposit insurance.

The rules need to do more to prevent consumers from being coerced into using payroll, government benefit, campus, prison release, tax refund or other types of prepaid cards. The CFPB has proposed disclosures to inform employees and government benefits recipients that they cannot be required to accept funds on a prepaid card. We support the disclosure, but more is needed. The ban on compulsory use should be extended to protect students, released prisoners, and recipients of tax refunds, government payments and insurance payments. More specific rules are needed to:

- Give consumers the up-front choice of whether to use a prepaid card and information on how to disenroll from a card they do not want;
- Ensure that they have the choice of direct deposit to their own account;
- Limit fees on unsolicited access devices for prepaid accounts and campus bank accounts.

The rules promote free and convenient access to balances, customer service and account transactions, but could do more. We support the clarification that consumers are entitled to free access to balances and transactions by telephone and online, and to receive free paper statements upon request. We also appreciate the proposal to give consumers access to account information beyond 60 days. In addition, we urge rules to make clear:

- ATM balance inquiries should be free.
- Consumers should not be charged for automated customer service for any purpose, or for reasonable access to live customer service.
- Account histories should be available online back 24 months and by request for the previous seven years.
- Consumers who want regular paper statements or an annual transaction history should have that option.
- Text messages for balance information and transactions should be available and free.
- Live foreign language support for customer service calls should be available in any languages that the institution uses in connection with the marketing of or acquisition of a card.

The proposed clear, uniform fee charts will promote understanding and comparison shopping. We support the proposed short- and long-form disclosures and the overall design of the two forms. The proposal strikes a good balance between enough information and not too much. However, the short form should:

- Provide better access to all fees at retail, through a flap that opens and a QR code or SMS short code;
- Omit the “overdraft/credit” disclosure for cards that lack those features. If overdrafts are permitted, use the word “overdraft” for cards that do, and distinguish cards that can overdraft from those that offer credit but no overdrafts.
- List overdraft fees, if permitted, at the full amount after any first year promotion.
- List incidence-based fees based on revenue, not occurrences;
- Omit the cash load fee from the top line and enable fair and complete comparisons between loading costs on different cards;
- Use a symbol to show lack of FDIC insurance. Offer the option of a symbol for bill pay and check deposit features;
- List the number of network ATMs;
- Have a single number with the average monthly cost;
- For settings where bigger font is possible, such as on websites, require bigger font than the small font proposed for retail packages.

The long form for all cards should have sections disclosing:

- whether the card carries overdraft fees or other credit features;
- funds availability policies;
- availability of bill payment and cost for check or electronic payments;
- availability of remote deposit capture;
- Foreign language disclosures for cards marketed in another language.

The CFPB should also prohibit incomplete or misleading fee information on websites and promotional materials.

Prepaid cards will finally have clear liability protection, dispute rights and access to error resolution procedures. Improvements would make those rules even more clear. In general, we support the proposal to extend the payroll card liability and error resolution regime to prepaid cards. We also support full protection for cards once they are registered. However, the current regime is too confusing and needs to be simplified, clarified and harmonized with network rules and credit card rules:

- Lost or stolen cards should be subject to a \$50 liability cap even if reported after two days.
- The deadline to dispute errors should be a simple 120 days. The current deadlines are unclear and result in a hidden 120 day policy that consumers do not know about.
- Financial institutions should be required to investigate untimely disputes (but need not provide provisional credit). A refusal to investigate an unauthorized charge would violate the rules that limit consumer liability.
- Fees for “research” needed to investigate an error should be prohibited.
- An annual written error resolution notice should still be sent for consumers who have not received an electronic or written statement in the prior year. It should include information on how to access account information and to obtain an annual account history.
- Registered, general purpose gift cards should carry protection from loss or theft.

The scope of the proposed rule is appropriately broad but it needs to encompass more types of prepaid cards. The rules appropriately cover a wide range of prepaid cards, including payroll, student and public benefit cards. The broad definition of “prepaid account” is important to keep the protections relevant as technology evolves, including into online, mobile and virtual currency accounts. We also support the proposal to prevent evasions by general-use reloadable cards that are marketed or labeled as gift cards. We urge the CFPB to extend the protections of Regulation E and the prepaid card rules to:

- Prepaid cards used for needs-tested benefits, unless on an EBT card platform;
- Health and flexible spending cards;
- Nonbank “bank accounts” like campus card accounts;
- Unsolicited access devices, even if the underlying account is presently covered by Regulation E.

Posting of fee schedules and account agreements on the CFPB’s and issuers’ websites will improve transparency and enhance competition. We support the proposal to require all prepaid cards, including payroll, government benefit and student cards, to post their fee schedules and agreements.

- Agreements should be searchable by the name of the school, employer, program manager and entity that brands a card, in addition to by the name of the bank issuer.
- Fee schedules should be searchable separately from terms and conditions.
- Text should be machine readable.

The CFPB should prohibit forced arbitration and class action bans in prepaid card agreements. The CFPB cannot police compliance with every rule by every provider. Wrongdoers who violate the proposed rules or other laws should be accountable in court. Forced arbitration clauses are corporate get-out-of-jail free cards.

II. Prepaid Cards Should be Separate from Credit Products, Which Should be Honest and Affordable

A. Overdraft and other credit features are inappropriate on prepaid cards.

The prepaid card market developed in response to the problems that overdraft fees and trouble managing credit pose for consumers. Those drivers continue to be at the heart of what a prepaid card is, how they are marketed, and why consumers turn to them.²

Overdraft fees should not be permitted on any ATM or debit card transactions, whether through a prepaid card or a bank account debit card. Overdraft protection should go back to its roots: an occasional courtesy to cover a bounced check. Overdraft services on ATM and debit card transactions are merely a crude and abusive form of credit. The failed opt-in regime under Regulation E has merely led banks to engage in deceptive practices to induce consumers into opting in. Back-end pricing through penalty fees that fall on the most vulnerable has replaced honest, up-front prices and competition.

But the CFPB does not need to decide how to treat overdraft fees on bank accounts. While overdraft practices are entrenched in the bank account world, the CFPB starts with a clean slate on prepaid cards,

² For a longer discussion of the reasons for keeping overdraft fees and credit features off of prepaid cards and the data and studies that support those reasons, see Comments of NCLC et al., General Use Reloadable Prepaid Cards at 10-38 (July 24, 2012), <http://www.nclc.org/images/pdf/rulemaking/cm-prepaid-card-july2012.pdf> (hereinafter “NCLC 2012 Prepaid Card Comments”).

where overdraft fees are rare. The CFPB does not need to repeat the mistakes that regulators made years ago when they spotted the potential for overdraft fee abuses but did little to prevent them. In this rulemaking, the CFPB can set aside the broader debate and determine that the differentiating features of prepaid cards make overdraft and credit features undeniably inappropriate on those cards:

- The defining feature of prepaid cards is that they are prepaid and do not overdraft (whether the term “prepaid” is used or not). Consumers do not expect to be able to overdraft on a prepaid card. That is the core difference between prepaid cards and bank accounts. Marketing messages throughout the industry promote that differentiator, which is how consumers understand prepaid cards.
- Prepaid cards do not have checks (nor, usually, ACH payments³) that could be returned for insufficient funds or “bounce.” Those checks are the historic rationale for overdraft protection and are still a key reason that some consumers choose overdraft protection for bank accounts.
- Prepaid cardholders are vulnerable consumers with lower incomes and lower credit scores than the typical bank account customer.⁴ The financial crisis, combined with the rise in bank fees, has led to an increase in consumers who cannot meet bank minimum balance requirements and are unprofitable and undesirable customers for banks.⁵
- Prepaid card balances are extremely low. The average daily balance of NetSpend cardholders is only \$80.⁶

³ Many prepaid cards do not permit incoming ACH debits. Cards that have bill payment features that use the ACH system typically segregate the funds immediately and do not permit the consumer to schedule a payment in advance without the funds to cover it. This issue is discussed at greater length in Section II.C, below.

⁴ Prepaid card users who use the cards at least monthly have lower incomes than the general population, although 14 percent earn \$75,000 or more annually. They are more likely to earn less than \$25,000. Pew Charitable Trusts, “Why Americans Use Prepaid Cards” at 3-4 (Feb. 2014),

http://www.pewstates.org/uploadedFiles/PCS_Assets/20_14/Prepaid-Cards-Survey-Report.pdf. The vast majority of new Chase Liquid customers had no bureau score or a score below 660 when they opened their Chase Liquid accounts. Presentation by Jon Wilk, Chase, to FDIC Committee on Economic Inclusion, http://www.fdic.gov/about/comein/2013/2013-05-16_presentation_wilk.pdf (hereinafter “Liquid ComE-In Presentation.”)

⁵ “The LMI market has continued to grow during the recent difficult economic climate, which appears to persist....[A] small, gradual slide in FICO scores has occurred, especially in the FICO score range 550 to 599. The drop in credit scores indicates that an increasingly large number of banked customers are credit impaired. Consequently, a larger percentage of consumers have a lower average daily balance than in the past. This trend has two ramifications: (1) more account holders are having difficulty maintaining an average daily balance sufficient to manage a traditional checking account, and (2) banks have a greater number of accounts that are not profitable or marginally profitable.” Mercator Advisory Group, “Opportunities in Prepaid: Advice for the Financial Institution’s Business Plan” (Oct. 2012),

http://www.accelnetwork.com/accelnetwork.com/documents/Prepaid_Opportunities_-_Mercator_Whitepaper_for_Fiserv-FINAL_10-17-2012.pdf.

⁶ Testimony of Daniel R. Henry, Chief Executive Officer, NetSpend Holdings, Inc., “Examining Issues in the Prepaid Card Market,” Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs, Subcomm. on Fin’l Inst’ns and Consumer Protection (Mar. 14, 2012), S. Hrg. 112-560 at 13, (“NetSpend Senate Testimony”), http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76233/pdf/C_HRG-112shrg76233.pdf.

- Many consumers turn to prepaid cards because they cannot get bank accounts,⁷ usually due to a history of overdrafts.⁸
- Prepaid cards are promoted as “no credit check necessary.”
- Prepaid cards are promoted for the ability to “control” spending, even when marketed for consumers without credit blemishes (i.e., for teens, as a budgeting tool).

While general purpose reloadable (GPR) prepaid cards and deposit accounts are similar in many respects, they are not identical. The prepaid card industry expects to be treated differently from bank accounts by, for example, receiving an exemption from the written statement requirement. That exemption may be appropriate given the low balances and thin margins on which prepaid cards operate. Those same low balances and other differences between prepaid cards and bank accounts, and between the typical profile of a prepaid card user and a bank account customer, make overdraft fees and credit features inappropriate.

B. Few prepaid cards have overdraft fees, but payday lender and some payroll cards do.

The vast majority of prepaid cards are true to their name, purpose and customers. The CFPB’s market survey shows that 97% of prepaid cards have no overdraft or credit features.⁹ The only major provider of prepaid cards with overdraft fees is NetSpend. Of the 66 cards surveyed in a report by Pew Charitable Trusts, only five had overdraft fees.¹⁰ Four are NetSpend cards and the fifth is no longer on the market.

Most of the prepaid cards that have overdraft fees are sold at payday loan stores and follow the NetSpend overdraft fee model.¹¹ For consumers of NetSpend GPR cards who opt in to overdraft “protection,” overdraft fees are \$15, with a maximum of three overdraft fees per month and a maximum negative balance of \$100, including the fees. NetSpend manages GPR cards under its own

⁷ The CEO of NetSpend testified that “The Bretton Woods study also reminds us that many of the consumers we try to serve no longer have access to checking accounts because they are among the 19 percent of U.S. adults who cannot qualify for an account because they are in the ChexSystems or TeleCheck’s database.” NetSpend Senate Testimony at 35. As of March 2013, 55% of Chase Liquid cardholders were not eligible to open a Chase bank account. Liquid ComE-In Presentation, *supra*.

⁸ The CFPB itself has noted “The great majority of involuntary account closures at the study banks are due to negative balances that account holders are unable or perhaps unwilling to repay, and many of these closures are associated with the use of overdraft.” Consumer Financial Protection Bureau, CFPB Study of Overdraft Programs: A white paper of initial data findings (June 2013) at 25, http://files.consumerfinance.gov/f/201306_cfpb_white_paper_overdraft-practices.pdf. A survey by the Pew Charitable Trusts also found: “About one-third of respondents closed their checking account due to overdraft fees.” Pew Charitable Trusts, “Overdraft America: Confusion and Concerns about Bank Practices,” http://www.pewtrusts.org/uploadedFiles/wwwpewtrusts.org/Fact_Sheets/Safe_Checking/Overdraft_America_Final.pdf.

⁹ CFPB, “Study of prepaid account agreements” at 25 (“CFPB prepaid survey”) (Nov. 2014), http://files.consumerfinance.gov/f/201411_cfpb_study_of-prepaid-account-agreements.pdf.

¹⁰ Pew Charitable Trusts, “Consumers Continue to Load Up on Prepaid Cards” at 9 (Feb. 2014) (“Pew 2014 Prepaid Card Report”), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.

¹¹ Payday lender prepaid cards are discussed in Section II.C.

brand and also under the Purpose Card¹² and Brinks Card¹³ brands. Insight Card Services,¹⁴ which primarily sells its cards at payday lending stores, also follows the NetSpend overdraft fee model.

Another prepaid card, the Metro PCS prepaid card, followed a different overdraft fee model,¹⁵ but appears to be off the market. Consumers are charged a one-time \$5.95 participation fee. When they overdraft, they receive an overdraft advance of \$50 with a \$15 overdraft fee applied. If the consumer does not pay the total overdraft amount, including fees, within 20 days, there is a late charge of \$3 per day.

The CFPB's prepaid card study found that not a single one of the 25 payroll card programs surveyed offered overdraft services.¹⁶ But we are aware of several payroll card programs that have opt-in overdraft fees.

NetSpend payroll cards, offered through its Skylight brand, have an overdraft program that is significantly worse than the GPR program.¹⁷ The fees are \$25 for every transaction once the \$5.00 buffer is exceeded. The cap on fees is five per month, not three. Consumers are not "cooled off" until they have incurred \$450 in overdraft fees. It is possible that, on some programs, overdraft fees may even be charged if the consumer has not opted in.¹⁸ The Skylight card overdraft program is discussed at greater length in Section II.E.

Another payroll card, the ReadyFUND\$ Payroll Card issued by First Covenant Bank, charges \$35 overdraft fees, up to two per month and up to 12 per year.¹⁹ The website for the card prominently pushes the overdraft "privilege."²⁰ The card appears to be heavily used by employers in the home health care business and also some McDonalds' franchises – locations where workers likely receive the minimum wage and may not have full time jobs.²¹

¹² See <http://www.gowithpurpose.com>; <https://www.gowithpurpose.com/plans-and-fees>, attached as Exhibit 3.

¹³ See https://www.brinksprepaidmastercard.com/how_it_works.html#what-it-costs, attached as Exhibit 10.

¹⁴ See http://www.insightcards.com/images/uploads/REP_ODP_Notice_Final_2.13.pdf, attached as Exhibit 6.

¹⁵ See http://www.metropcscards.com/terms_direct.html, attached as Exhibit 11.

¹⁶ CFPB Prepaid Survey, *supra*, at 25.

¹⁷ See Exhibits 12, 13 (NetSpend overdraft program fact sheets).

¹⁸ See, e.g., http://webs.wichita.edu/depttools/depttoolsmemberfiles/Controller/skylight_fees.pdf, attached as Exhibit 16. Regulation E does not require opt-in before charging overdraft fees on ACH transactions, check transactions, and recurring debit card transactions. The New York Attorney General's report on payroll cards notes that at least two of the eight payroll card vendors it surveyed did not follow the Regulation E opt-in rules. Office of New York State Attorney General Eric T. Schneiderman, "Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers" at 15 (June 12, 2014) ("NY AG Payroll Card Report"), <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf>.

¹⁹ <http://www.readyfunds.net/assets/PDFs/ReadyFund-ODP-9.5.14.pdf>, attached as Exhibit 17.

²⁰ <http://www.readyfunds.net/>.

²¹ <http://www.readyfunds.net/partners/>.

C. Payday lender prepaid cards: overdraft and other fees hit consumers coming and going.

NetSpend is the largest prepaid card program manager that offers overdraft “protection” on its prepaid cards. Cards branded or sold by payday lenders appear to be NetSpend’s biggest source of revenue.²² ACE Cash Express²³ has been NetSpend’s biggest distributor.²⁴ NetSpend also provides prepaid cards for the country’s largest payday lender,²⁵ Advance America,²⁶ and several other major payday lenders: Cash America,²⁷ Check ‘n Go (CNG Financial),²⁸ Amscot,²⁹ Purpose Financial Services (Purpose Money, First American Loans, First American Cash Advance and CheckAdvance)³⁰ and Check City.³¹ All of these NetSpend payday lender prepaid cards except the Amscot and Check City ones appear to have overdraft fees.³²

²² In its last filing to the Securities and Exchange Commission (SEC), before the merger with TSYS, NetSpend disclosed that NetSpend’s largest distributor is ACE Cash Express, and cards distributed through ACE accounted for 36.6% of total revenues in 2012. NetSpend’s “long-term relationships” also include Advance America, Cash America International, and Check City. NetSpend Holdings, Inc., Form 10-K for the fiscal year ended December 31, 2012, SEC File No. 001-34915 at 7 (Feb. 2013) (“NetSpend 2012 Form 10-K”), <http://www.sec.gov/Archives/edgar/data/1496623/000104746913001507/a2212965z10-k.htm>. TSYS’s recent SEC Form 10-K does not discuss NetSpend’s activities in the same detail. But the Form 10-K does say that NetSpend’s distributors are “primarily alternative financial services providers” and “as a number of our NetSpend distributors are engaged in offering payday loans, further legislative and regulatory restrictions that negatively impact their ability to continue their operations could have a corresponding negative impact on our ability to offer GPR cards through their locations, potentially resulting in a significant decline in revenue from the NetSpend business.” Total System Services, Inc. Form 10-K for the fiscal year ended December 31, 2014, SEC File No. 1-10254 at 11, 14 (Feb. 2015) <http://www.sec.gov/Archives/edgar/data/721683/000119312515063177/d835889d10k.htm>.

²³ See <https://aceelite.acecashexpress.com/prepaid-debit-card/pink.m> (click on “Terms and Conditions,” which are attached as Exhibit 1).

²⁴ NetSpend 2012 Form 10-K, *supra*, at 7.

²⁵ The largest payday lenders are discussed in Susanna Montezemolo, Center for Responsible Lending, “Payday Lending Abuses and Predatory Practices” at 9-10 (Sept. 2013), <http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>.

²⁶ See <https://www.advanceamerica.net/services/details/visa-prepaid-cards>. The fee schedule is at <https://www.gowithpurpose.com/plans-and-fees> and is attached as Exhibit 3.

²⁷ See <http://www.cashamerica.com/FinancialServices/PrepaidVisa.aspx>; <https://www.netspend.com/how-it-works/what-it-costs.shtml>, attached as Exhibit 2.

²⁸ See <https://www.checkngo.com/pre-paid-debit-card.aspx>; <https://www.netspend.com/how-it-works/what-it-costs.shtml>, attached as Exhibit 2.

²⁹ See <http://www.amscotfinancial.com/prepaid-mastercard.aspx>; <http://www.amscotfinancial.com/resources/prepaid-mc-fees.pdf>, attached as Exhibit 4.

³⁰ See <https://www.purposefinancialservices.com/services/details/visa-prepaid-card>; <http://www.gowithpurpose.com/plans-and-fees>, attached as Exhibit 3.

³¹ See <http://www.checkcity.com/services/prepaid-debit-cards/>; <https://www.netspend.com/prepaid-debit-card/applyNow.m?AID=checkcity> (click on “Cardholder Agreement,” which is attached as Exhibit 5).

³² Overdraft fees are on the fee schedules for the NetSpend cards under the NetSpend and Purpose brands. See <https://www.netspend.com/how-it-works/what-it-costs.shtml>, attached as Exhibit 2; <http://www.gowithpurpose.com/plans-and-fees>, attached as Exhibit 3. Overdraft fees also appear on pages of 16-19 of the terms and conditions for the ACE Cash Express card, <https://www.aceelitecard.com/account/terms/2013-ACE-Meta-Visa-CHA.pdf>, attached as Exhibit 1.

Other payday lenders also have prepaid cards. Insight Card Services manages the prepaid cards sold by Approved Cash Advance³³ and CheckSmart (Community Choice Financial).³⁴ The Insight cards also have overdraft fees, following the NetSpend model.³⁵

Another large payday lender, Check Into Cash, sells prepaid cards that do not appear to offer overdraft services.³⁶ But its U.S. Money Card has particularly large and unusual fees that can be triggered by payday loans, discussed further below.

Other payday lenders sell more traditional prepaid cards that do not presently have overdraft fees.³⁷ These lenders are likely awaiting the outcome of this rulemaking before offering prepaid cards with overdraft services.

While the payday lenders generally do not issue or manage prepaid cards directly, they make money from the sale of cards in their stores. Payday lenders also may have revenue-sharing or other compensation arrangements with the prepaid card program manager, especially for cards that carry the payday lender brand, or that are sold in a payday lending store and result in a consumer using the card to receive direct deposits.

Three fairly unique characteristics of many payday lender prepaid cards add to the already destructive cost of payday loans and increase revenues on the cards:

- Overdraft fees.
- ACH debit capacity.
- ACH return fees, ACH stop payment fees, and sometimes ACH payment fees.

These features are quite rare on other prepaid cards. But many payday lender prepaid cards are designed to enable payday loans and to profit from them.

Traditionally, payday lenders have secured their loans with post-dated checks. More recently, both storefront and online lenders have also taken the electronic equivalent of a post-dated check: authorization for a series of electronic debits from the consumer's account. Those debits typically are processed over the automated clearinghouse (ACH) system.³⁸ Consumers can preauthorize an ACH

³³ See <http://www.approvedcashadvance.com/visa-pre-paid-card.php>.

³⁴ CheckSmart's main website, <http://www.checksmartstores.com/>, lists several different States where the prepaid card is available. An example is: <http://www.checksmartstores.com/arizona/prepaid-card-s/>.

³⁵ See INSIGHT VISA® PREPAID RELOADABLE CARD CARDHOLDER AGREEMENT, https://www.insightcards.com/images/uploads/121221_TCs_v19a_REP_Final.pdf, attached as Exhibit 6.

³⁶ <http://checkintocash.com/us-money-card-prepaid-debit-card/>; <http://usmoneycard.com/fees.html>, attached as Exhibit 9.

³⁷ See, e.g., Momentum Visa Prepaid Debit Card (DFC Global, which operates the Check Cashing Store and Money Mart): <https://www.momentumcardbalance.com/DFC/fees.html?csrfToken>, attached as Exhibit 8; Ion Prepaid Card (Money Tree), <http://www.myioncard.com/CHA.pdf>, attached as Exhibit 7.

³⁸ In theory, a payday loan could also be repaid by preauthorizing a payment using the prepaid card number, with the payment being processed over the Visa, MasterCard or other card network. However, the payday lender would have to pay interchange fees on the card payment, and card network rules also generally do not permit preauthorized payments to repay a payday loan. See Visa, "Visa Core Rules and Visa Product and Service Rules" at PSR-331 (Oct. 15, 2014), http://usa.visa.com/download/about_visa/15-October-2014-Visa-Rules-Public.pdf.

debit by a payday lender from their account in the same way that they would authorize their mortgage company to withdraw money automatically: through a preauthorized ACH debit.

Most prepaid cards do not come with either checks or the capacity for preauthorized ACH debits. While a consumer might be able to initiate a “push” ACH payment to a merchant by using the prepaid card’s own bill payment function, the cards reject incoming ACH debits – payments that are “pulled” by the merchant from the consumer’s account. Prepaid cards do not permit ACH debits because they lead to overdrafts.

However, payday lender prepaid cards are the exception: many payday lender prepaid cards permit preauthorized ACH debits. Consumers who have regular income deposited to their prepaid accounts can use preauthorized ACH payments from those accounts to secure a payday loan in the same way that they can for a checking account. Consequently, it is possible for a consumer to take out a payday loan, have the loan deposited to the payday lender-branded prepaid card, and repay the payday loan through preauthorized ACH debits deducted from the prepaid card.

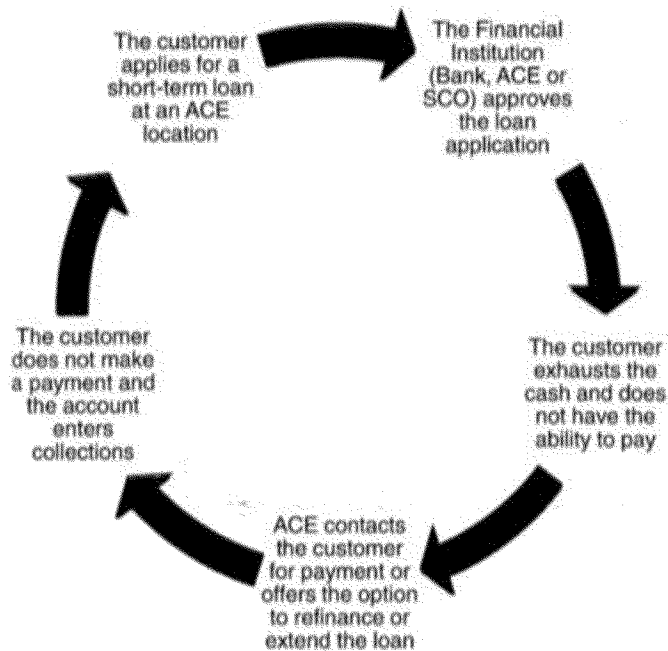
An ACH payment, like a check, can bounce if the account does not have sufficient funds to cover it. But if a prepaid cardholder has opted in to overdraft services, the payday loan may be repaid even if the card does not have sufficient funds, for an extra \$15 to \$25 on top of the cost of the payday loan. Even if the payday loan payment does not directly overdraft the card, the hole in the consumer’s income caused by that payment may trigger overdraft fees for subsequent purchases needed for necessities or other expenses.

The payday payment also may bounce the first time, if the overdraft protection is not sufficient to cover the payment. But the lender can wait a few days and submit it twice more. Each time the payment bounces, the consumer will pay an ACH nonsufficient funds (NSF) or return fee – just like a bank account customer would pay NSF fees if a check or ACH payment bounces. For example, the Check Into Cash U.S. Money Card charges a \$14.95 ACH decline fee. The Insight cards have \$5.00 ACH debit return fee. The ACH debit transaction decline fee is \$1.00 on NetSpend cards.

Overdraft and NSF fees on payday lender prepaid cards add to the misery of the cycle of debt of payday loans. ACE Cash Express, NetSpend’s largest distributor, was forced to enter into a consent decree with the CFPB for unfair, deceptive and abusive practices that pushed new payday loans on consumers who could not afford to repay a previous loan.³⁹ This vicious cycle of debt was part of the business model, displayed in a graphic that ACE Cash Express supplied in training materials for its debt collectors:⁴⁰

³⁹ CFPB, Press Release, “CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt” (July 10, 2014) < <http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/>.

⁴⁰ http://files.consumerfinance.gov/f/201407_cfpb_graphic_ace-cash-express-loan-process.pdf.

The Loan Process, Continued.

This cycle of debt was not unique to ACE; it is the payday loan business model.⁴¹ For a consumer whose ACE payday loan was being repaid from the NetSpend ACE prepaid card with overdraft “protection,” overdraft fees would merely add to the misery of this cycle of debt.

The Insight payday lender prepaid cards have also been the subject of charges of unfair and deceptive conduct. The OCC took action against the Insight card’s issuer, Urban Trust Bank, after noting “troubling” concerns about the line of credit and overdraft features on the cards that “have characteristics similar to predatory payday loans.”⁴² The payday lender CheckSmart began selling the cards as a way to make 300% loans after Arizona voters upheld a 36% rate cap.⁴³ After the OCC shut down the overdraft and line of credit features and Urban Trust Bank eliminated all overdraft fees on its

⁴¹ Half of all payday loans are in a sequence at least 10 loans long. CFPB, “CFPB Data Point: Payday Lending” at 4 (March 2014), http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

⁴² Letter from Thomas J. Curry, Comptroller of the Currency, to Lauren K. Saunders, NCLC et al. (Aug. 23, 2012), http://www.nclc.org/images/pdf/high_cost_small_loans/letter-occ-check-smart-urban-trust-bank.pdf.

⁴³ See Comments of NCLC et al. to CFPB on Electronic Fund Transfers (Regulation E), Advance Notice of Proposed Rulemaking, Docket No. CFPB-20120019, RIN 3170-AA22 at 5 (submitted July 23, 2012) (“NCLC Prepaid ANPR Comments”), <http://www.nclc.org/images/pdf/rulemaking/cm-prepaid-card-july2012.pdf>.

prepaid cards,⁴⁴ Insight moved to another bank, Republic Bank of Chicago, and revamped its overdraft protection to copy the NetSpend model.⁴⁵

Payday lender prepaid cards can make money off of payday loans and negative balances even if they do not have formal overdraft protection. Like other payday lender prepaid cards, the U.S. Money Prepaid MasterCard enables payday loans by permitting preauthorized ACH debits. What makes the card unusual is that it charges \$4.95 for ACH debits *even if there are sufficient funds*.⁴⁶ In other words, every payday loan payment made by ACH from the U.S. Money card will cost another \$4.95 on top of the payday loan fee. In addition, the card has a whopping \$14.95 ACH decline fee (compared to the \$1 fee on NetSpend cards). The ACH decline fee can be charged up to three times on a single payday loan payment if the payment is re-submitted.⁴⁷ The card also charges for check packages; \$14.95 for bounced checks; and \$19.95 to stop payment of a check.

All of these fees increase the cost of credit that is extended to consumers without considering ability to pay. The fees deducted from prepaid card funds immediately or are offset against incoming deposits as soon as those deposits are made.

Consumers often take refuge in prepaid cards because they have struggled with overdraft fees, payday loans and other credit products. While the proposed rules will not prevent consumers who have prepaid cards from taking out payday loans, the rules should at least prevent the cards from adding to the costs of predatory lending.

D. The “guardrails” on NetSpend’s GPR overdraft program do not prevent consumer injury.

NetSpend touts its “Best Darn Overdraft Ever solution.”⁴⁸ NetSpend emphasizes the elements of its program that lessen the impact of overdraft fees on its GPR cards. While the guardrails limit injury, they do not prevent it. They do not justify a deceptive program aimed at a vulnerable population. Although promoted as a way to help consumers meet expenses, the program actually leaves consumers with less ability to meet end-of-the-month expenses, not more.⁴⁹ Notably, NetSpend does not even follow its own guidelines in its highly abusive payroll card overdraft fee program, discussed in the next section.

Two studies by the Federal Reserve Bank of Kansas City using NetSpend GPR card data confirm that consumers who opt in to overdraft protection pay more each month for their prepaid cards. The first study found that accountholders who used the overdraft service paid an average of \$14.62 per month

⁴⁴ See NCLC, Press Release, “Bank Halts Overdraft Fees on Payday Lender Prepaid Cards; Stops Use of Cards to Evade State Payday Laws” (Feb. 1, 2013) (linking to OCC action), <http://www.nclc.org/images/pdf/pr-reports/pr-prepaid-paydayhalt-2013.pdf>.

⁴⁵ The overdraft services are described in these two documents:
http://www.insightcards.com/images/uploads/REP_ODP_Notice_Final_2.13.pdf;
https://www.insightcards.com/images/uploads/121221_TCs_v19a_REP_Final.pdf.

⁴⁶ See <http://usmoneycard.com/fees.html>, attached as Exhibit 9.

⁴⁷ NACHA rules payday lenders and other merchants to submit an ACH debit three times – the original entry, and two additional times if it bounces. See 2015 NACHA Operating Rules § 2.12.4.

⁴⁸ NetSpend Senate Testimony, *supra*, at 13.

⁴⁹ See Section II.G.

more for their accounts (in all fees) than consumers who only used a free \$10 overdraft buffer.⁵⁰ The second study,⁵¹ which focused on a narrower category of consumers,⁵² found that the median consumer who opted in to overdraft protection paid \$9.19 in overdraft fees each month (and \$9.61 more in all fees than non-overdrafters).⁵³ Of consumers who opted in, those at the 75th percentile – the quartile that paid the highest amount of fees – paid an average of \$14.84 per month in overdraft fees and an average total of \$36.15 per month in all fees.⁵⁴ That is an average of 11.9 overdraft fees per year – basically, one every month.

NetSpend highlights these features of its GPR overdraft program⁵⁵:

- *\$10 overdraft cushion before overdraft fees are charged.* BUT, while the cushion may prevent overdrafts on small accounting errors, it still permits a \$15 fee per overdraft once the account is negative by at little as \$10.01. And once the consumer has exceeded the overdraft buffer, every transaction – even one as low as \$1 – triggers an overdraft fee.
- *Overdraft fees of \$15 v. \$35 overdraft fees common on bank accounts.* BUT, while \$15 may seem low to many people, a single fee is enough to cover a day's food for a family of three and is two hours work for a minimum wage worker.
- *Limit of three fees (\$45) per month.* BUT, an extra \$45 per month is a huge bite out of the income of a struggling family.
- *Limit of \$100 negative balance.* BUT, that limit includes the overdraft fees, so the program provides very small amounts of credit – at most \$85, and possibly \$55 or even less – that are unlikely to help with a significant unplanned expense. A \$100 hole in the next month's income is significant and can still lead to a cycle of overdrafting.

⁵⁰ The average monthly fees for “overdraft” users were \$27.24 and the average fees incurred by “overdraft buffer” users were \$14.62. The study did not break out how much of that difference was overdraft fees. See Fumiko Hayashi & Emily Cuddy, Fed. Reserve Bank of Kansas City, “General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks,” Table 5.2 at 68 (Feb. 2014) (“Kansas Fed, GPR Report”), <http://www.kc.frb.org/publicat/reswkpap/pdf/rwp14-01.pdf>. “Overdraft” users were defined as anyone who had at least one overdraft transaction in excess of the buffer (though the transaction did not necessarily incur a fee). According to an email from the study's author, Emily Cuddy, on file with NCLC, that definition was used instead of a definition encompassing anyone who had opted into overdraft protection because the difference between the two populations was trivial: more than 99% of those who opted for overdraft protection also had at least one overdraft.

⁵¹ Fumiko Hayashi and Emily Cuddy, Federal Reserve Bank of Kansas City, “Recurrent Overdrafts: A Deliberate Decision by Some Prepaid Cardholders?” (October 2014) (“Kansas Fed, Recurrent Overdrafts”), <http://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-08.pdf>.

⁵² In the second paper, the sample was only accountholders who were eligible for overdraft program over the entire lifespan of the account. *Id.* at 11. According to an email from the study's author, Fumiko Hayashi, on file with NCLC, an accountholder who received direct deposits only 2 or 3 times in his entire account history of 12 months or so and made 1 overdraft was not in the sample studied.

⁵³ The total fees for consumers at the 50th percentile were \$25.70 per month for overdrafters compared to \$16.09 for non-overdrafters. See Kansas Fed, Recurrent Overdrafts, Table A-2 at 30. The difference is not entirely overdraft fees. At the 50th percentile, overdrafters paid an average of \$9.12 in overdraft fees but also paid more in ATM fees, but less in some other fees, than non-overdrafters. *Id.*

⁵⁴ *Id.*

⁵⁵ See NetSpend “42%” Fact Sheet, attached as Exhibit 13.

- *Required opt-in to emails about overdrafts.* BUT, an email sent after the fact does not prevent the overdraft in the first place or give a consumer the choice of skipping a purchase that is not worth incurring an overdraft fee. And consumers without smartphones or computers may check their email only sporadically.
- *24 hour grace period to cure overdrafts.* BUT, a grace period does not help someone who is out of money.
- *Cooling off period after 12 fees in 12 months.* BUT, after incurring \$180 in overdraft fees – and being left with a hole up to \$100 in the next paycheck – being forced to go cold turkey for 30 days is not a consumer protection.

These features may make NetSpend's overdraft program "less bad" than the overdraft practices of many banks. But the NetSpend cards are aimed at and used by a much more vulnerable population. NetSpend's customers are "low-income" with an average daily prepaid card balance of only \$80.⁵⁶ To be eligible for NetSpend's overdraft program, a consumer needs to have direct deposit income of only \$200 per month.⁵⁷

According to NetSpend itself, "many" of its customers "no longer have access to checking account because they are among the 19 percent of U.S. adults who cannot qualify for an account because they are in the ChexSystems or TeleCheck's data base."⁵⁸ But problems with overdrafts are the leading reason why consumers can no longer obtain a bank account.⁵⁹ NetSpend even markets its prepaid cards to consumers who are looking to avoid overdraft fees. "Testimonials" on NetSpend's website include:

- "My old bank used to charge me overdraft fees every time I spent more than my account balance. I felt like all my money was spent on fees and I couldn't get ahead. NetSpend has helped me manage my money and avoid unnecessary fees. I highly recommend it for anyone who is tired of excess fees from their bank." - Christina A., Spartanburg, SC
- "Between work and taking care of my family I never had time to balance my checkbook, and I always ended up paying huge overdraft fees for going over my balance. Now I use my Card with free text and email alerts. I get my balance in a text message to my phone after every transaction. I can even request my balance before making a purchase. Alerts have saved me so much money!" - Nikki D., Irvine, CA⁶⁰

But NetSpend's website does not feature customers who have been burned by its overdraft fees, like this consumer:

⁵⁶ NetSpend Senate Testimony, *supra*, at 7, 13.

⁵⁷ See <https://www.netspend.com/account/overdraftTerms.m>.

⁵⁸ NetSpend Senate Testimony, *supra*, at 13.

⁵⁹ A study by Harvard Business School researchers estimated that only 2.5% of account closures are due to fraudulent activities; the remaining 97.5% are caused by overdrafts. Dennis Campbell, Asís Martínez Jerez and Peter Tufano, Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures (June 6, 2008) available at www.bostonfed.org/economic/cprc/conferences/2008/payment-choice/papers/campbell_jerez_tufano.pdf.

⁶⁰ See https://www.netspend.com/prepaid-debit-card/prepaid_visa_card_testimonials.m.

Net spend.Charged me 60.00 In overdraft fees for a charge I never made and all customer service people hung up on me.Everytime.

You call it cost you 50 cents and then they hang up on you.all I want is 45.00 back so I will not be homeless after my heart surgery. Over 19.99 they charged me three overdraft fees.

And everytime you ask to speak to a manager you are disconnected and they dodge your text on the internet I have decided to go back to cash before all my money is gone.This is one of the biggest and most dishonest scams I have seen in awhile.⁶¹

NetSpend claims that many NetSpend customers get “fee free overdrafts.”⁶² But their data – which may not encompass the especially abusive payroll card program – are misleading. NetSpend boasts⁶³ that:

- 12% of monthly overdraft users pay no fees. BUT 88% of monthly overdraft users *do* pay a fee.
- 55% of overdraft "transactions" are fee free. BUT that is “transactions,” not people. It includes transactions that only overdraw the account by \$10 or less.
- 41% of overdraft users get at least one free overdraft a month. BUT that only means that consumers either make one transaction that goes into the \$10 buffer before paying fees on subsequent overdrafts, or have one overdraft less than 24 hours before payday. And the number of free overdrafts is less important than the number of costly ones.

Moreover, any “guardrails” on overdraft fees and practices today are self-imposed. There is nothing in current law that requires NetSpend or any other prepaid card provider or payday lender to follow them. In fact, even NetSpend does not follow its “friendly” practices consistently.

E. NetSpend’s ugly payroll card overdraft fees

Hidden from view in the more secretive payroll card market – a market where employees do not choose the cards freely – NetSpend’s overdraft program is decidedly less friendly. Under the Skylight brand, Netspend payroll cards have been used by fast-food and other restaurants,⁶⁴ retail stores,⁶⁵ hotels,⁶⁶ health care providers,⁶⁷ state governments,⁶⁸ colleges and universities,⁶⁹ and public schools,⁷⁰ among

⁶¹ See <http://netspend.pissedconsumer.com/stole-my-money-20140529491712.html>.

⁶² See NetSpend “29%” Fact Sheet, attached as Exhibit 12.

⁶³ *Id.*

⁶⁴ Church’s Chicken, KFC, Long John Silver, Pizza Hut, Taco Bell, White Castle, Cracker Barrel, Friendly’s, Frisch’s, Houlihan’s. See Skylight Program Partners, attached as Exhibit 14 (page from power point).

⁶⁵ Big Lots, Coach Leatherware, DSW, Haverty’s, Kohl’s, Liz Clairborne, Macy’s, Office Max, Payless, Shaw Flooring, SuperValu, The Limited, Valvoline. See *id.*

⁶⁶ MGM Mirage and Starwood. See *id.*

⁶⁷ Hospital Corp. of America, LifePoint Hospitals, Inc. See *id.*; Cleveland Clinic, see <https://portals.clevelandclinic.org/Portals/75/Documents/Payroll%20FAQs%202011.pdf>.

⁶⁸ The States of Kansas, <https://www.da.ks.gov/ar/payroll/#Paycard>, and Missouri, <http://oa.mo.gov/accounting/state-employees/direct-deposit>.

⁶⁹ Catholic University of America, see <http://treasurer.cua.edu/Payroll/paycards.cfm>; Kansas State University, see <http://www.k-state.edu/hr/current-employees/pay/directdeposit.html>; Wichita State University, http://webs.wichita.edu/depttools/depttoolsmemberfiles/Controller/skylight_fees.pdf.

⁷⁰ Denver Public Schools, Miami-Dade Public Schools. See <http://forms.dadeschools.net/webpdf/4679.pdf>.

others. As with other payroll cards, the Skylight cards are likely to be heavily used by workers making at or near the minimum wage and who may not have full time work.



While we cannot confirm that the overdraft services are available on every Skylight program, overdraft fees do appear on the fee schedules for Skylight cards for the State of Kansas⁷¹ (also used by Kansas State University⁷² and Wichita State University⁷³), the State of Missouri,⁷⁴ and Denver Public Schools,⁷⁵ among others. The NetSpend payroll cards have far fewer guardrails:⁷⁶

- The overdraft cushion is only \$5, not \$10.
- Overdraft fees are \$25, not \$15.
- Up to five fees can be charged each month, not three.
- The maximum negative balance is \$125, not \$100.⁷⁷
- Email alerts are not required, and might not even be available.
- No grace period.
- The cooling off period kicks in at 18 fees in 12 months – **or \$450** – not 12 fees.

A minimum wage worker who incurs five overdrafts must work **17 hours** to cover the fees. Even a **single fee is three hours of work** at the minimum wage.

⁷¹ See <https://da.ks.gov/ar/payroll/SOKChFeeSched.pdf>, attached as Exhibit 22.

⁷² See <http://www.k-state.edu/hr/current-employees/pay/directdeposit.html>.

⁷³ See http://webs.wichita.edu/depttools/depttoolsmemberfiles/Controller/skylight_fees.pdf, attached as Exhibit 16.

⁷⁴ The fee schedule for State of Missouri Skylight payroll card fee schedule is attached as Exhibit 23.

⁷⁵ See <http://departmentforms.dpsk12.org/payroll/paycardsfaq.pdf>, attached as Exhibit 15.

⁷⁶ See NetSpend "42% Fact Sheet, attached as Exhibit 13.

⁷⁷ The employee could still incur five overdraft fees (\$125) in a month if the employee is paid biweekly. That is, after the first pay period the employee could incur three overdraft fees (\$75) on \$50 in overdrafts, and after the second pay period, the \$125 could cover two more fees.

One employer that uses Skylight payroll cards has experienced first-hand the problems that they cause. The Denver Public Schools has a “Paycards – Frequently Asked Questions” sheet that has this stern warning:

PLEASE DON'T OPT INTO THE OPTIONAL BALANCE PROTECTION PROGRAM, WHICH WILL INCURE A \$25 CHARGE FOR EACH TRANSACTION THAT PAYS INTO OVERDRAFT.⁷⁸

The vehemence of this warning, in all caps, seems to indicate that the overdraft program has caused problems not only for employees but apparently for the employer as well.

A payroll card report by the New York Attorney General also confirms that overdraft fees add substantially to employee costs and payroll vendor profits. The report does not identify the payroll card vendors, so it is not clear if the cards with overdraft fees are NetSpend Skylight cards or if the fees are typical of the NetSpend programs.

The Attorney General found that, at two employers that used payroll cards with overdraft protection, overdraft fees made up more than 40% of the fees assessed.⁷⁹ At one of employer's, overdraft fees and declined balance fees made up 75% of its revenue. At another company, the payroll card vendor received over \$200,000 in overdraft fees over a one-year period, for an average of \$77.82 per worker – not counting the workers who did not opt in to overdraft “protection.” The total cost to use the payroll card with overdraft protection could range as high as \$20.00 per month, compared to \$1.25 in other programs without overdraft fees.⁸⁰

Overdraft fees are inappropriate on any prepaid card. But targeting expensive overdraft programs at employees who may have been forced to use the card to receive their pay is inexcusable.⁸¹

F. Overdraft fees cost consumers tens of millions and could lead to a race to the bottom.

NetSpend earned roughly \$50 million or more in revenues from overdraft fees in 2014.⁸² Every dollar in overdraft fees that NetSpend earns is a dollar out of a consumer's pocket – and most likely a dollar out of the pocket of a very low income consumer.

⁷⁸ <http://departmentforms.dpsk12.org/payroll/paycardsfaq.pdf>.

⁷⁹ Office of New York State Attorney General Eric T. Schneiderman, “Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers” at 14 (June 12, 2014) (“NY AG Payroll Card Report”), <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf>.

⁸⁰ NY AG Payroll Card Report at 9.

⁸¹ The problems of employers who push employees into receiving pay on a payroll card are discussed in Section VI.B below.

⁸² In its last 10-K filing before being acquired by TSYS, NetSpend said that 7% of the revenue on the GPR cards was related to overdraft. In addition, TSYS said on its January 2015 earnings call that payroll card overdraft fees “add several percentage points” to the 7% number. Total System Resources (TSS) Earnings Report: Q4 2014 Conference Call Transcript, TheStreet Transcripts at 8 (Jan. 28, 2015) (Paul Todd, CFO) <http://www.thestreet.com/story/13025999/8/total-syst-em-resources-tss-earnings-report-q4-2014-conference-call-transcript.html>. Conservatively, it appears that 10% to 12% of Net Spend's revenue comes from overdraft fees. TSYS' had \$2.4 billion in revenues in 2014, *id.* at 1, <http://www.thestreet.com/story/13025999/1/total-syst-em-resources-tss-earnings-report-q4-2014-conference-call-transcript.html>, and NetSpend accounted for 19% of that

That kind of revenue is extremely difficult for other companies to ignore. Prepaid cards are thin margin products. Consumers have low incomes and low balances. Some have said that if Green Dot were to add overdraft fees, it would dramatically amplify the company's earnings and elevate Green Dot's market capitalization by hundreds of millions of dollars.⁸³ Green Dot's CEO has estimated that adding overdraft fees would add over \$1 per share in additional profit.⁸⁴

Green Dot has vowed not to add overdraft fees to its prepaid cards, despite the lure of high profits for the company as a whole and the CEO. But other companies are eager to do so if the regulatory landscape becomes clear. Certainly, payday lenders, who thrive on getting consumers in a bind, will have no compunctions in selling prepaid cards with overdraft fees.

Companies that ignore overdraft revenue will face pressure from investors and put themselves at a disadvantage with their competitors. It will be tempting to add less visible back-end fees and to minimize the up-front fees that consumers are more apt to notice. Overdraft revenue can also fund other bells and whistles to make a card more attractive.

Overdraft revenue has completely distorted the checking account market and led to a sick race to push consumers into overdrafting their accounts. Banks feel compelled to offer "free checking" that is not really free. Banks that might prefer to charge a modest and transparent monthly fee with no tricks and traps cannot do so. The same type of race to the bottom led to abusive credit card practices until Congress finally had to weigh in with the Credit CARD Act.

Overdraft fees are not yet entrenched the way they are in the bank account world. Keeping overdraft fees and overdraft revenue out of the prepaid card market is essential to keeping that market safe for consumers. It will be difficult to unring the bell if overdraft fees are allowed to spread. Keeping overdraft fees off prepaid cards will be good for both consumers and the prepaid card industry.

G. Overdraft "protection" leads to a cycle of debt that leaves consumers with less, not more, liquidity for necessities.

Defenders of overdraft services on prepaid cards claim that overdraft loans help consumers to bridge the gap to payday and handle "emergency needs."⁸⁵ But as with payday loans, the reality is that overdraft programs are typically used for everyday expenses⁸⁶ by people who have regular gaps between their income and expenses. The overdraft fees only exacerbate that gap, causing a cycle of debt that makes it *harder*, not easier, to meet those expenses.

revenue. See Total System Services, Inc. Form 10-K for the fiscal year ended December 31, 2014, SEC File No. 1-10254 at 1 (Feb. 2015),

<http://www.sec.gov/Archives/edgar/data/721683/000119312515063177/d835889d10k.htm>.

That means that at least \$45.6 million to \$54.7 million of NetSpend's revenues came from overdraft fees.

⁸³ "Green Dot Investor Call: Overdraft, Check Cashing," BankTalk (July 31, 2013).

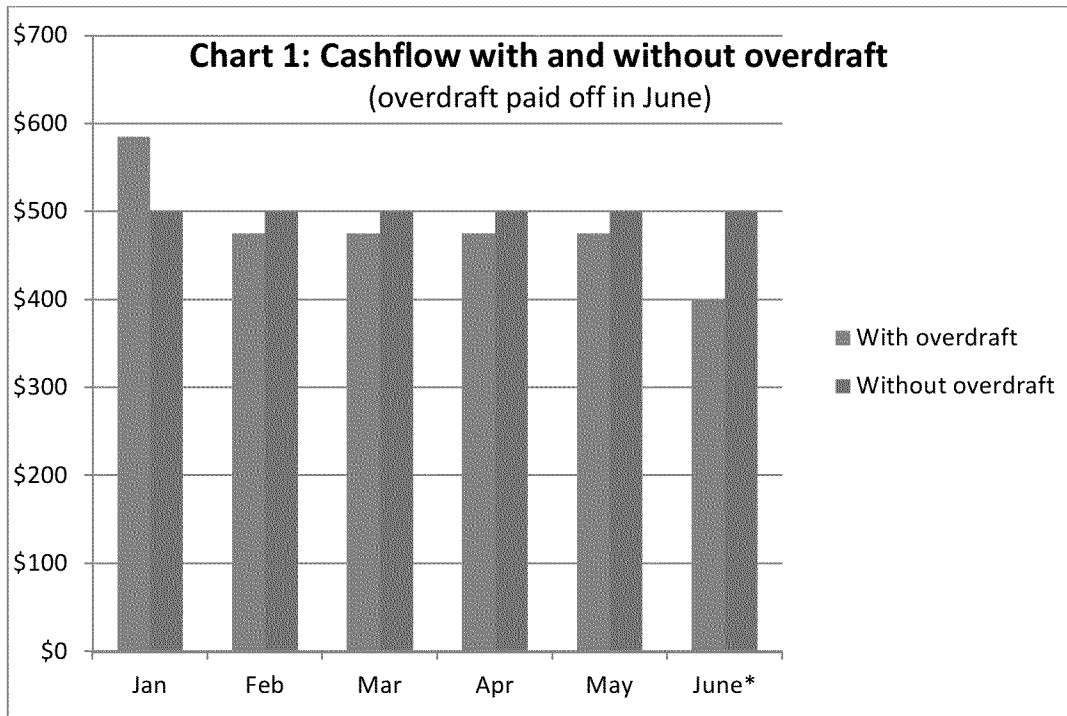
⁸⁴ Public remarks at Power of Prepaid Conference, Washington, DC, June 27, 2013.

⁸⁵ NetSpend Senate Testimony, *supra*, at 35.

⁸⁶ NetSpend admits that overdrafts are primarily used for "groceries and to take out cash for rent and other essential bill payments." NetSpend "29%" Fact Sheet, attached as Exhibit 12.

The first time a consumer overdrafts, the consumer temporarily has extra cash. But that overdraft leaves a hole in the next paycheck that makes the next month worse. With \$100 less pay, the consumer may need to overdraft again. But the consumer can only get \$85 in cash (\$15 goes for the fee), and cannot completely fill the hole in the paycheck. So in the second month and every subsequent month that the consumer overdrafts, the consumer has \$15 less money for necessities. The average NetSpend customer incurs seven overdraft fees a year, and a quarter of the customers incur nearly 12 fees or more – basically one a month.⁸⁷

This cycle of debt can be seen in Chart 1. This chart illustrates the best case scenario under NetSpend’s GPR overdraft program: a consumer incurs only one \$15 overdraft fee and overdrafts exactly \$85 each month, so that the consumer maximizes the amount of credit for the \$100 negative balance permitted. In January, the consumer has more available cash than if she had not overspent her income. But the following months, even *after* drawing on overdraft credit, she has \$15 *less* money to meet end-of-the-month expenses. In June, when the consumer refrains from overdrafting again and repays the overdraft, the consumer needs to make it through the month short a full \$100.



The ability to overdraft at the end of the month may feel helpful, and consumers may be appreciative.⁸⁸ But the truth is that, even before repaying the overdraft, the consumer has less money than if she had not begun the overdraft cycle.

The \$15 overdraft fee (or \$25 if it is a payroll card) may not seem like much to many people. But for low income consumers struggling paycheck to paycheck, it is a lot of money. A single fee is two hours work at the minimum wage. With \$15, a family can buy a basket of groceries that includes macaroni, tuna,

⁸⁷ See Kansas Fed, Recurrent Overdrafts, *supra*, Table A-2 at 30.

⁸⁸ The comments of NetSpend customers are discussed in Section III.E.

peas, chicken soup, orange juice, ground turkey, eggs, cheese and bananas.⁸⁹ Even for those who receive nutrition aid, a bit of extra cash helps with diapers, toothpaste, gas or bus fare--things that food stamps do not cover. Those \$15 fees also add up. The median NetSpend customer who opts in to overdraft protection spends \$109.44 per year on overdraft fees.⁹⁰ At the 75th percentile, the average is \$178.08, and some pay far more.⁹¹ The cost is also likely considerably higher for payroll card users.

Overdraft and other credit features on prepaid cards have the worst aspects of high-cost credit:

- *Short term:* Credit is repaid as soon as the next deposit comes in, usually just a few days later.
- *Balloon payment:* The entire amount of the overdraft, including the fee, is offset against the incoming paycheck.
- *Flat fees that look small but result in high rates and high costs:* Fees of \$15 to \$25 are imposed on loans as small as \$1 and no bigger than \$85 to \$100 for only a few days. Even using the best case scenario, with repayment of the overdraft occurring in ten days, if an \$85 overdraft is treated as a loan, the APR is **644%**, on a GPR card (with a \$15 overdraft fee) and **1,074%** if it is payroll card (with a \$25 overdraft fee).⁹² The cost can run into the hundreds of dollars a year.
- *Payments seized from income before necessities:* The overdraft loan is skimmed off the top of wages or benefits and has first priority, before payment of necessities.
- *No control over how or when to repay:* The overdraft is repaid automatically. The consumer has no ability to control when to repay it or to pay other expenses first.
- *Asset-based lending with no underwriting or regard for ability to meet ongoing expenses:* The only qualification is direct deposit income **as low as \$200/month**.⁹³ Eligibility does not turn on whether the consumer's income is enough for basic expenses or whether the consumer is already overwhelmed with debt and has no capacity to repay the overdraft and the overdraft fee without re-borrowing.
- *Evasions of laws that protect public benefits and income needed for necessities.* Public benefits, pensions and wages that are protected from garnishment can be seized with no recourse.

These are the same features that make payday loans and bank account overdraft fees such destructive forms of credit.

⁸⁹ See <http://morefood.org/how-much-food-could-you-buy-with-an-extra-15-per-month/>.

⁹⁰ See Kansas Fed, Recurrent Overdrafts, *supra*, Table A-2 at 30.

⁹¹ *Id.*

⁹² On the GPR card, the maximum negative balance is \$100, including the \$15 overdraft fee. So the maximum credit is \$85. Consumers most likely overdraft a few days before payday, and the overdraft is repaid with the next direct deposit. The credit is likely outstanding less than 10 days. A CFPB study found that the majority of debit card overdrafts are repaid in three days or less. CFPB, Press Release, "CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges" (July 31, 2014), <http://www.consumerfinance.gov/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/>.

⁹³ See AMENDED TERMS FOR YOUR CARDHOLDER AGREEMENT, <https://www.netspend.com/account/overdraftTerms.m>.

H. Overdraft and other credit features have been used to evade state and federal credit laws.

Overdraft and credit features on prepaid cards have been used to disguise the cost of credit and avoid state and federal credit laws, as discussed at greater length in our earlier comments.⁹⁴ Payday lenders have used two different models to offer high cost loans in states that otherwise limit interest rates to 36% or lower.

First, payday lenders have used overdraft fees on prepaid cards to make payday loans. After Arizona voters upheld the state's 36% usury cap, the payday lender CheckSmart began offering prepaid cards with overdraft "protection" for a fee of 15% of the negative balance. The overdrafts were virtually identical to a \$15 per \$100 payday loan, except that they were likely repaid more quickly (with the next deposit).

Second, CheckSmart also used "transfer" fees on the prepaid card to disguise the cost of a linked line of credit. The cost of the credit line was purportedly 35.9% APR. But the prepaid card charged a "convenience transfer fee" of \$3.50 per \$28.50 advance. Thus, it cost \$3.50 plus interest to yield net credit of \$25, the equivalent of \$14 per \$100 plus interest.⁹⁵ The loans require direct deposit of public benefits or wages to the prepaid card and were repaid by the next deposit, as soon as a day or two later. The annual rate for a 14-day loan was 390% to 401%. These 400% loans were offered in states that have usury caps of 28% to 36%. The cost of the credit was not acknowledged as a finance charge but instead was charged as a "fee" on the prepaid card account.

Both the overdraft service and the linked line of credit were nothing more than thinly veiled triple-digit interest rate payday loans. After the OCC brought a supervisory action against the bank that issued the CheckSmart cards, CheckSmart changed banks and adopted the NetSpend model of overdraft services, discussed above. Those "services" are still thinly veiled payday loans.

Payday lenders are continuously looking for new ways to disguise the cost of their loans and evade lending laws. They are undoubtedly awaiting the outcome of this rulemaking. If the CFPB does not restrict overdraft and other credit features on prepaid cards, payday lenders will once again look for ways to make loans through prepaid cards. The preemption issues that come from the involvement of a bank, the bifurcation of costs between a deposit account and a credit account, and the false claim that overdraft "services" are not credit will enable the payday lender to evade state credit laws.⁹⁶

⁹⁴ NCLC Prepaid ANPR Comments, *supra*, at 3-10, 26-33.

⁹⁵ See NCLC et al, Comment to the Dep't of the Treasury, Financial Management Service, RIN 1510-AB 24, Docket Number FISCAL-FMS-2010-00031 at 17 & Exhibits 2, 3, 4 (April 25, 2011) ("NCLC Treasury Rule Comments"), http://www.nclc.org/images/pdf/other_consumer_issues/exempt_public_benefits/prepaid-card-comments.pdf.

⁹⁶ For a discussion of whether state credit laws apply to overdraft loan charges, see NCLC, Consumer Banking and Payments Law § 2.6.3.7 (2013 & Supp.).

III. The Proposed Rules Require Credit to be Offered Honestly as Credit, in Compliance with Credit Laws.

A. Introduction

For all of the reasons discussed above, overdraft features should be prohibited on prepaid cards. Other forms of credit should be completely separate from prepaid cards, not offered as a “feature” of the prepaid card. Credit, when offered to a prepaid cardholder, should be affordable, responsible and comply with credit laws. Costs should not be disguised in fees on a prepaid card account, and lenders should not have first priority over funds in a prepaid card account.

The CFPB’s proposed rules take important steps toward achieving these goals. While they do not ban overdraft services altogether, they require overdraft loans to comply with credit laws. When credit is accessed through a prepaid card, the proposal requires compliance with the important protections that govern credit cards. The proposal includes important protections that will make credit safer for consumers and give them better choices. While we offer suggestions for improving the rules in Section IV, in this section we discuss why the rules are an important first step.

B. Overdraft “services” are credit.

We oppose overdraft features on prepaid cards. But to the extent that they are available, we support the CFPB’s proposal not to extend the Regulation E overdraft rules to prepaid card, and instead to require overdraft credit to comply with the Truth in Lending Act (TILA) and Regulation Z. Prepaid cards that offer overdraft “services” claim that they are not offering credit in order to escape compliance with Regulation Z. But overdraft services are clearly “credit” – under both the common understanding of the term and TILA’s definition of “credit.”

Both bank account and prepaid card overdraft services lend funds to consumers after their accounts are empty, funds that are repaid later. Virtually none of the comments filed by NetSpend customers talk about overdraft protection in the traditional sense – covering a payment that would have inadvertently bounced. NetSpend emphasizes that its customers know their balances.⁹⁷ The NetSpend customers who have filed comments with the CFPB make clear that they are using overdrafts to borrow money until their next payday.⁹⁸ A quarter of overdraft users incur an average of one fee every month,⁹⁹ and 100,000 NetSpend customers use overdraft “regularly.”¹⁰⁰ Under any normal usage of the term “credit,” that is what overdraft services are.

⁹⁷ See Fred Williams, “Please, let us keep our expensive overdraft loans, prodded consumers cry” (Mar. 20, 2015) (“Almost all overdraft users enroll in text message alerts that give them immediate updates on their balance.”).

⁹⁸ See, e.g., Fred Williams, “Overdrafts on prepaid cards: Good deal, or debt trap?” Creditcards.com (Dec. 24, 2012) (“Overdrafts on prepaid cards, Creditcards.com”)(, <http://www.creditcards.com/credit-card-news/overdrafts-prepaid-cards-1271.php> (quoting consumer who used NetSpend overdrafts “since Washington State has removed most of the payday loan operations”); Comment CFPB-2014-0031-2662 (“I depend on this every month.”); Comment of Marva Josepg, CFPB-2014-0031-1591 (Mar. 10, 2015) (“it helps out when I’m unable to pay a bill or just something my children may need”).

⁹⁹ See Kansas Fed, Recurrent Overdrafts, Table A-2 at 30.

¹⁰⁰ Overdrafts on prepaid cards, Creditcards.com, *supra*.

Similarly, overdraft services fit within the TILA and Regulation Z definitions of “credit.” Credit is “the right granted by a creditor or a debtor to defer payment of a debt or to incur debt and defer its payment.”¹⁰¹ Federal regulators have acknowledged that “[w]hen overdrafts are paid, credit is extended,” and “[o]verdraft balances should be reported on regulatory reports as loans.”¹⁰²

Overdraft fees also meet TILA’s basic definition of a “finance charge,” which is “any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.”¹⁰³ However, the Federal Reserve Board exempted overdraft fees from TILA’s finance charge definition unless “the payment of such items and the imposition of the charge were previously agreed upon in writing.”¹⁰⁴ This strained exemption goes so far as to exempt fees even if there is a written agreement and a charge is computed by applying a rate of interest, “unless the financial institution agrees in writing that it will pay such items.”¹⁰⁵

Even though overdraft credit is “credit” within the meaning of TILA, bank account overdraft services escape being “creditors” subject to TILA. That is because to be a creditor, the entity must extend credit that is either subject to a finance charge or is payable in more than four installments.¹⁰⁶ Under the loophole discussed above, bank account overdraft fees are not considered to be a “finance charge,” and thus banks that offer overdraft services are not “creditors.”

The result is that companies that solicit consumers to opt in to overdraft fees do a hypocritical, deceptive dance. They tout the “protection” and “service” that they offer in order to persuade consumers to opt in to overdraft coverage. At the same time, in the fine print, they claim that they are not actually “agreeing” to provide any protection or service, and may only do so as a “courtesy” at their sole discretion. Of course, the consumer has to agree to repay the courtesy.

The CFPB has appropriately determined that – if overdraft services are offered on prepaid cards – the convoluted exemption to Regulation Z need not be extended to prepaid cards. The CFPB can and should regulate overdraft credit as the credit that it is – and the providers of that credit as creditors -- consistent with the Bureau’s TILA authority over credit.

C. Credit accessed through a card is a credit card.

The proposed rules appropriately require credit that is accessed through prepaid cards to comply with credit card rules. Here again, treating credit accessed through a card as a credit card is consistent with a common sense definition and also with TILA and Regulation Z.

Prepaid cards are “prepaid.” When the card is being used to access credit, it makes sense to consider it a credit card. Whether the credit is being accessed through an overdraft or being transferred onto the card and then spent, the card is a vehicle to access and use credit.

¹⁰¹ 15 U.S.C. § 1602(f). See also Reg. Z, 15 C.F.R. § 1026.2(a)(14) (“Credit means the right to defer payment of debt or to incur debt and defer its payment.”).

¹⁰² 70 Fed. Reg. 9127, 9129, 9129-30 (Feb.24, 2005).

¹⁰³ 12 C.F.R. § 1026.4(a).

¹⁰⁴ 12 C.F.R. § 1026.4(c)(3).

¹⁰⁵ Official Interpretations to Reg. Z § 1026.4(c)(3)-1.

¹⁰⁶ 15 U.S.C. § 1602(g).

The definition of “credit card” in TILA is quite expansive, applying to any device that accesses credit. It does not even require a card or any of the features traditionally associated with credit cards, such as monthly payments or a periodic interest charge. That definition is “any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.”¹⁰⁷

Moreover, neither a finance charge nor four installments are required for a device to be considered a “credit card” under TILA,¹⁰⁸ or an entity to be considered a “creditor” for credit card purposes.¹⁰⁹ In some ways, the reach of the credit card provisions of TILA is broader than the other provisions. Prepaid cards that access overdraft services or a line of credit fit the basic definition of “credit card” in TILA. They also fit the Regulation Z definition of credit card, which has also long provided that credit cards include:

- A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.
- B. A card that accesses both a credit and an asset account (that is, a debit-credit card).
- ...
- E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.¹¹⁰

Thus, it is consistent with TILA to consider a prepaid card to be a credit card if it accesses credit, a credit account, or can be activated or triggered to access a credit feature.

The Federal Reserve Board did adopt Commentary stating that the term “credit card” does not include “A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.”¹¹¹ However, this exclusion requires the credit to be “occasional,” “inadvertent,” and in the absence of a “credit feature or agreement.” The exclusion is also entirely a creature of rulemaking, and there is nothing in the TILA statute that compels the CFPB to extend it to prepaid card overdraft services that are clearly used as a form of credit.

The better analogy is the traditional treatment under Regulation Z of overdraft lines of credit. Unlike “courtesy” overdraft services, overdraft lines of credit – an explicit form of credit – have long been

¹⁰⁷ 15 U.S.C. § 1602(l).

¹⁰⁸ 15 U.S.C. § 1602(l). We recognize that the CFPB has proposed not to extend credit card rules to prepaid cards that access credit if the creditor does not impose a finance charge or allow payment in more than four installments. As discussed in Section IV.E and IV.F of these comments, we urge the CFPB not to establish the exemption, or at a minimum to narrow the exceptions from the finance charge definition, because otherwise the proposed exemption will allow for evasions from the credit card protections.

¹⁰⁹ *Id.* at § 1602(g)(2) (“For the purpose of [Part D and selected disclosure requires in 1637], the term “creditor” shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.”)

¹¹⁰ Official Interpretations of Reg. Z § 1026.2(a)(15)-2.i.

¹¹¹ Official Interpretations of Reg. Z § 1026.2(a)(15)-2.ii.A.

viewed as “credit cards” under Regulation Z. The Commentary is clear that if a line of credit “can also be accessed by a card (such as a debit card), that card is a credit card”¹¹²

However, in 2011, the Federal Reserve Board excluded overdraft lines of credit from the narrower definition of credit card used to determine applicability of the TILA provisions added by the Credit Card Accountability, Responsibility, and Disclosures (CARD) Act of 2009.¹¹³ That exception does not exist in the statute, which excludes only home-equity plans secured by credit card. The exception was added to protect traditional credit union overdraft lines of credit that are used to cover check and ACH overdrafts as well as debit card overdrafts. Here again, the exclusion is regulatory and does not need to be extended to prepaid cards.

In short, there is ample authority and precedent to require that credit extended to holders of prepaid cards be treated as credit covered by the credit card provisions of TILA. That authority also permits the CFPB to enact rules to delineate a clear separation between prepaid cards and credit in order to ensure compliance with the requirements for credit cards and to fulfill the broader purposes of TILA and other statutes that the CFPB implements.

D. The rules that would apply to credit accessed through prepaid cards are reasonable and will protect consumers.

The provisions of the proposed rule that require credit accessed through prepaid cards to comply with Regulation Z and, in most circumstances, the Credit CARD Act provisions will provide important protections to consumers. The rules do not forbid companies from offering credit to prepaid cardholders, but they do apply standard credit card rules to that credit.

Ability to pay. Creditors would be required to “consider[] the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.”¹¹⁴ The rule does not impose any specific residual income, debt-to-income, or documented underwriting requirements. It does require the creditor to consider the consumer’s obligations and not only income, and whether the consumer has the capacity to repay the loan on its terms.¹¹⁵ That is the bare minimum for any responsible form of credit. If anything, the CARD Act rules are too weak.¹¹⁶

Reasonable time to pay. Instead of being repaid automatically from the first incoming deposit, as early as one day later, the rule requires that the consumer be given the benefit of the credit for a reasonable

¹¹² Official Interpretations of Reg. Z § 1026.2(a)(15)-2.ii.C.

¹¹³ 12 C.F.R. §1026.2(a)(15)(ii)(B).

¹¹⁴ Reg. Z § 1026.51(a)(1)(i).

¹¹⁵ “Reasonable policies and procedures also include consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations.” Reg. Z §1026.51(a)(1)(ii).

¹¹⁶ The CARD Act requires consideration of “debt obligations” but not regular expenses like rent, food and transportation. The CFPB’s cost-benefit analysis concluded that “Creditors can assess consumers’ ability to pay at low cost, and as long as credit limits remain low it would be relatively easy for consumer who have or are eligible to have prepaid overdraft to be deemed able to make the minimum periodic payment on the small amount of credit currently extended in connection with these services.” 79 Fed. Reg. at 77280. It is unclear whether the CFPB is assuming that overdraft programs would be readjusted to provide small minimum payments rather than the lump sum payments that are currently required.

amount of time and have reasonable notice of the amount due each month. Payments would be due 21 days after each monthly statement.

A limit on “fee harvester” fees in the first year. Fees in the first year after account opening could not exceed 25% of the credit line. While the interest rate is not capped, the important fee harvester rule will prevent deception, evasion and consumer abuses. Although the creditor could charge 500% APR, it would have to disclose that rate. It cannot impose fees that individually might not appear excessive but cumulatively pile up and distort the APR. By limiting fees, costs will be primarily priced through a periodic interest rate that results in costs that are proportional to the amount of credit used and the time that it is used.

Separate monthly credit statements. The consumer will see clearly how much credit she has used and how much it has cost each month and year-to-date. The usage and cost of credit will not be buried in the prepaid card transaction history, obscuring how much the consumer has overdrafted and what it cost. Consent will be required before electronic statements can be provided as a substitute for written ones, so consumers who do not have the capacity to view electronic statements will have the right to paper ones.¹¹⁷

Control over how to repay: no mandatory electronic repayment or offset. As with a credit card, the consumer could voluntarily set up automated payments but would not be required to do so.¹¹⁸ The consumer can control when, how and from what account payments are made. This requirement is especially helpful to consumers with irregular income. It also gives the lender an incentive to consider affordability, because the lender does not have first lien on the consumer’s income and repayment is not guaranteed. Necessities will come first.

Limits on late fees, over-the-limit fees, and other penalty fees. Penalty fees must be reasonable and proportional to the violation. Late fees would be capped at \$25, or \$35 for a second offense, and they cannot exceed the required payment. If the payment due were only \$15, then the late fee could not exceed \$15. Declined transactions fees will be banned for the credit portion of the prepaid account.¹¹⁹

APR disclosure and the ability to compare credit options. Consumers will receive a disclosure of the annual percentage rate (APR), which expresses the full cost of a loan on an annual basis. The APR enables loans of different amounts, different lengths, and different mixtures of interest and fees to be compared to each other. A loan that has a lower APR will generally cost less than one with a higher APR if the two are used for the same amount of time, whether for one week or one year.¹²⁰ The pricing and disclosures on overdraft fees, by contrast, prevent a consumer from knowing that the cost of borrowing

¹¹⁷ However, as discussed in Section XIII.B.4, we have concerns that some providers are requiring electronic communications consent for some products.

¹¹⁸ As discussed in Section XIII.A.1 and XIII.B.6, we urge the CFPB to provide additional protections for automated payments.

¹¹⁹ As discussed in Section IV.J, we urge the CFPB to ban all declined transaction fees for prepaid accounts.

¹²⁰ Because of the fee harvester limitations, credit will be priced primarily through a periodic rate, at least during the first year, making the APR a more accurate representation of the cost of credit. However, weaknesses in Regulation Z rules for calculating APRs open-end credit can result in the APR being understated for cards that have significant fees and small credit lines, even if the fees are capped at 25% of the credit line, and especially for cards in the second year if the CFPB continues to permit the fee harvester cap to expire after the first year. We urge the CFPB not only to make the fee harvester cap permanent but also to require disproportionate fees to be included in the APR disclosed in advertisements and solicitations.

\$100 for 10 days until payday would be far lower on a 29% APR credit card than on a prepaid card that charges \$15 overdraft fees. Consumers do not need to understand how the APR is calculated; they only need to know that lower is better than higher.

While not specifically set out in the proposed rule, the impact of the rules will likely lead to two other benefits:

Clear credit line and less fudging of credit availability. Creditors will likely tell consumers exactly how much credit they have available and will not claim that it is a discretionary “courtesy” that may or may not be available when needed. Under the current regulatory scheme, in order to evade the Truth in Lending Act rules, banks cannot tell consumers honestly how much credit they are giving them. They have to be vague and hem and haw, claiming that they are not even offering credit and are making no promises. Of course, as with credit cards and lines of credit today, the creditor can always shut down a credit line at any time. But in the absence of a reason to do so, the consumer will know how much credit she has and can count on.

Clear separation between the prepaid card account and the credit account. While the proposed rules do not mandate it, compliance will be easiest if the provider does create a separate credit account.¹²¹ Just like other consumers who manage their deposit accounts separate from their credit lines, prepaid card consumers will be able to have a clear separation and more conscious use of credit.

Three other proposed rules that will specifically apply to prepaid card credit will also help consumers to keep their prepaid deposit account separate, to avoid credit if they wish to do so, and to manage their credit like traditional credit cardholders:

Waiting period. The rule requires a 30-day waiting period after registration of a prepaid card before a provider could offer or add a linked credit account or credit feature. (As discussed below, we believe the period should be 90 days.) Consumers who are shopping for a prepaid card have enough to consider and should not have to evaluate credit options too. The consumer can more easily discard a card that she does not like if there is not a credit line on it that needs to be repaid.

Warning about credit/overdraft features. Many consumers turn to prepaid cards because they have had trouble with overdraft fees or credit. While those features require opt-ins, consumers may wish to avoid cards that will try to push credit on them, which may be hard to resist when budgets are tight.

Payments due no more frequently than monthly. The current credit card rules do not specify payment frequency but do require statements for each month where there is activity and limit payments to 21 days following each statement. In practice, credit cards never require payments more frequently than once a month, and the proposed prepaid card credit rules make that practices clear for prepaid cardholders.

These rules do prevent responsible forms of credit from being offered to prepaid cardholders who have the capacity to handle the amount of credit offered. They also do not prevent links between a prepaid card and a credit account, such as the ability to transfer funds from the credit account to the prepaid card or to set up voluntary automatic payments in the other direction. The rules do limit harmful forms of credit that are not based on ability to pay and that lead to a cycle of debt.

¹²¹ As discussed below in the section-by-section analysis, we believe a separate account should be required.

E. Prepaid cardholders will have better choices if they are not offered the false choice of overdraft “protection.”

Proponents of overdraft fees on prepaid cards argue that consumers should have the choice. NetSpend has used fear-mongering tactics to induce its customers to file comments with the CFPB asking for the “right to choose” overdraft. Many of the comments are boilerplate, obviously taken from a NetSpend template. The more individualized comments reveal several points:

- Consumers are using overdraft as credit,¹²² but some do not understand that.¹²³
- Many consumers are stuck in a cycle of debt, overdrafting month in and month out.¹²⁴
- The comments reflect no awareness that overdrafting leaves less money to meet expenses.¹²⁵
- Not surprisingly, consumers like lower overdraft fees better than higher overdraft fees.¹²⁶
- Some consumers only use the free \$10 buffer, which the proposed rules would not eliminate.¹²⁷
- NetSpend has not told its customers that the proposal would not ban all forms of credit (or even all forms of overdrafts), or that the rules will make credit more affordable.

Consumers deserve better choices than ones that are designed to drain their thin income, put them into a cycle of debt, and make it harder, not easier, to meet expenses at the end of the month. Harmful practices can always be defended using the mantra of “choice.” That is exactly what abusive lending is: bad choices offered to struggling individuals that take advantage of their desperate situation.

For some consumers, who have regular gaps between their income and their expenses, credit is not the answer. The best choice is to avoid taking on the added expense of overdrafts. Harder choices, like doing without, budget, saving, or going to a family member who will only lend money for a true emergency, are likely to be much better than the easy but ultimately unhelpful choice of “fast cash.” Even for irregular expenses, like a high winter heating bill, a balloon-payment overdraft loan that puts the consumer in a cycle of debt is not the best choice. A consumer who cannot overdraft might instead

¹²² Comment of Dayon Halcy, CFPB-2014-0031-0572 (Mar. 3, 2015) (helps out “when funds are low and the bills are hig [sic]”); Comment of Marva Josepg, CFPB-2014-0031-1591 (Mar. 10, 2015) (“it helps out when I'm unable to pay a bill or just something my children may need”); Fred Williams, “Overdrafts on prepaid cards: Good deal, or debt trap?” (Dec. 24, 2012), <http://www.creditcards.com/credit-card-news/overdrafts-prepaid-cards-1271.php> (quoting consumer who used NetSpend overdrafts “since Washington State has removed most of the payday loan operations”).

¹²³ Comment of Robert Kelley, CFPB-2014-0031-0697 (Mar. 4, 2015) (“the overdraft protection. is beneficial to most consumers, if their smart on how they use it and don't abuse it.....credit is fine but you must have the means to repay what you borrow.....”).

¹²⁴ See, e.g., Comment of Mary Miller, CFPB-2014-0031-2662 (Mar. 18, 2015) (“I depend on this every month” for medication.); Comment of David Leegrang, CFPB-2014-0031-1114 (Mar. 6, 2015) (“i always max out on my card so this allows me to handle my financial responsibilities without worrying about overdraft fees.”).

¹²⁵ See, e.g., Comment of Priscilla Bennett, CFPB-2014-0031-0576 (Mar. 3, 2015) (“I need it. my pay covers my bills only. not everyday expensive I need it more because of this Health care . Health care doesn't care bout your living expensive ,”).

¹²⁶ See, e.g., Comment of Andrea Authorlee, CFPB-2014-0031-0563 (Mar. 3, 2015) (I “only worry about a \$15.00 fee compared to the normal \$35 and up”); Comment of Tina Malone, CFPB-2014-0031-0917 (Mar. 5, 2015) (“it's more economical than a bank's fees”); Comment of Jerryal Williams, CFPB-2014-0031-0851 (Mar. 4, 2015) (“the fee is much lower than what the banks would normally charge you.”).

¹²⁷ See, e.g., Comment of Roxanne Reeves, CFPB-2014-0031-1116 (Mar. 6, 2015) (“I need that 10 dollar cushion its there without being charged a high overdraft fee like most banks charge.”).

pick up the phone and find a better option. For example, many utilities offer payment plans to cover spikes in heating or cooling costs.¹²⁸

For consumers who are not too overextended, the proposed rules will result in better credit options – whether the consumer accesses the credit through overdraft (which is unnecessary and we oppose) or by affirmatively transferring funds from a line of credit. Credit will be tailored to the consumer’s ability to pay, and consumers will have more control and time to manage payments. Cost will be more proportional to the amount of credit used.¹²⁹ Lenders will be able to offer more affordable installment payments, which are not possible under the rules governing overdraft programs today.¹³⁰

Critics claim that the proposed rules will eliminate credit options for prepaid cardholders. But two months after the proposed rules were announced, the largest GPR card provider, Green Dot, announced that it is planning to offer a line of credit to its customers, both prepaid cardholders and bank account customers.¹³¹ The details are not yet public. But given Green Dot’s strong stand against overdraft fees, it appears likely that its line of credit will be considerably more affordable than overdraft protection programs today.

Here is an example of how the new rules would work if the consumer were offered a credit line at 36% APR and used it to borrow the same \$85 that is available under NetSpend’s overdraft program today. Instead of repaying the credit in a balloon payment immediately upon the next direct deposit, the consumer would have payments no more than once a month, due no sooner than 21 days after each monthly statement. Interest for borrowing that \$85 for five weeks would be \$2.93 instead of \$15 to \$25 for only a few days’ of credit.

¹²⁸ See, e.g., Charlie Harak, NCLC, *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs* (Sept. 2013), http://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/amp_report_final_sept13.pdf.

¹²⁹ The fee harvester rule would cause the credit to be largely priced through a periodic interest rate, at least for the first year. Under traditional common law principles, overdraft fees would be considered invalid liquidated damages because they are not proportional to the cost of the overdraft. See Chi Chi Wu, NCLC, “Restoring the Wisdom of the Common Law: Applying the Historical Rule Against Contractual Penalty Damages to Bank Overdraft Fees” (April 2013), http://www.nclc.org/images/pdf/high_cost_small_loans/common-law-overdraft-fees.pdf.

¹³⁰ “Courtesy” overdraft services cannot be based on a credit agreement, which an installment payment plan requires.

¹³¹ Kevin Wack, “Green Dot Plans to Offer Credit to Prepaid Customers,” *American Banker* (Jan. 30, 2015), <http://www.americanbanker.com/news/consumer-finance/green-dot-plans-to-offer-credit-to-prepaid-customers-1072456-1.html>.

Chart 2: Cost of \$85 Credit NetSpend Overdraft v. 36% Line of Credit		
	Overdraft Fee	Line of Credit
Cost	\$15 to \$25	\$2.93
APR	644% to 859%*	36%
Time to repay	A few days	21 days from monthly statement
*Assuming the overdraft is repaid in 10 days. ¹³²		

The disparity is even greater for a smaller overdraft, for example one of \$10.01.¹³³ The overdraft fee is the same, \$15 or \$25, but the cost to borrow that amount at 36% for five weeks would be only \$0.34.

The proposed rules will result in better choices for consumers. Consumers will have more control over whether to borrow, and credit will likely be cheaper and better designed than under current practices.

IV. The Overdraft/Credit Rules Are a Good Start But Have Loopholes that Need to be Closed.

A. Creditors will evade the rules by offering credit not limited to a “particular card.”

1. Overview

While the proposed rules include substantial protections for some forms of credit offered to prepaid cardholders, they contain a large loophole. The proposal applies credit card rules and other protections only to two categories of credit:

- (1) credit accessed using the prepaid card directly through an overdraft (i.e., credit “pulled” by the prepaid card from the credit line), and
- (2) credit transferred (“pushed”) to the prepaid card account from a line of credit that only “allows deposits directly into particular prepaid accounts specified by the creditor” and does not allow a consumer to directly deposit credit into any other asset account.

Credit that is transferred or “pushed” onto the prepaid card from a line of credit that may be directly deposited to accounts other than a particular card specified by the creditor would not be considered a “credit card” and would receive none of the proposed protections.

The “particular card” loophole is likely to be exploited in several ways. First, payday lenders are likely to develop open-end credit lines designed for their own prepaid cards but also accessible for other prepaid cards. Second, other predatory lenders will develop credit lines for prepaid cards that can be added to any card. Third, prepaid card providers will develop credit lines designed primarily for use with their own cards but with the theoretical possibility that the credit can be deposited into another asset

¹³² See discussion in Section II.G.

¹³³ While overdraft fees are not incurred until the negative balance reaches \$10.01 on a GPR card or \$5.01 on a payroll card, beyond that threshold an overdraft fee is charged on every transaction, even one as small as \$1.

account. Fourth, any prepaid card that has a savings feature that is technically a separate account might be outside the rules.

To prevent these very real and likely forms of evasion, the CFPB must mandate a stricter standard. All open-end lines of credit that use prepaid cards as an access device and permit direct deposits or transfers to prepaid card accounts should be covered by credit card rules if either (1) the creditor is the same institution as or has a business relationship with the prepaid card issuer,¹³⁴ or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. A completely unrelated credit account that simply permits deposits through the ACH system to bank accounts but has no connection to prepaid card issuers or consumers identified as prepaid cards users would not be covered.

2. Payday lenders are already developing open end lines of credit and will link them with their own, but also other, prepaid cards

The fear that payday lenders will exploit the loophole for nonexclusive push credit is not remote. Payday lenders are already developing open end lines of credit in order to evade credit laws, and that trend is likely to accelerate. Payday lenders are already offering prepaid cards and making loans that are deposited to and repaid from those cards. It will be natural to link the two.

One of the largest lenders, Cash America – which sells the NetSpend prepaid card – has shifted from balloon payment payday loans to longer-term payday loans and open-end lines of credit. Since 2011, Cash America’s open-end credit lines have grown both in volume and as a share of the payday lender’s business. Lines of credit made up \$21.6 million of Cash America’s domestic loan balances in the fourth quarter of 2011 and grew to \$66.2 million by the fourth quarter of 2014, comprising over 22% of the loan balances.¹³⁵

Payday lenders have a considerable motivation to move to open-end lines of credit. As the payday lending industry moves away from single-payment balloon loans, they will be constrained by rate caps for installment lending in some states. But many states have no rate cap, or a looser one, for open-end lending.¹³⁶ Federal law also supplies a strong motivation for predatory lenders to make open-end loans. The TILA APR that must be disclosed and advertised for closed-end loans includes most fees. But the APR for open-end loans includes only periodic interest. The lower APR can help to evade rate caps that are based on the APR.

In addition, the growing focus on limiting rollovers of closed-end loans makes a move to open-end lending a natural for high-cost lenders. Open-end credit plans, by definition, contemplate repeat lending and are harder to mesh with rollover limits. Unlike a series of single payment payday loans, a

¹³⁴ Throughout these comments, we generally use the term “issuer” to refer to the entity in charge of the card program, whether that entity is the issuing bank or the program manager.

¹³⁵ Hecht, John. “Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework” at 31 (presented at the CFSAsolutions, Little Rock, AR, Feb. 27, 2014), [http://cfsaa.com/Portals/0/cfsa2014_conference/Prese ntations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf](http://cfsaa.com/Portals/0/cfsa2014_conference/Prese%20ntations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf).

¹³⁶ For example, Virginia places restrictions on closed-end payday loans but not on open-end ones. Consequently, payday lenders have moved to open-end loans. See “Lenders Find Loopholes Around Virginia Law Limiting Payday Loans,” FoxNews.com (Dec. 31, 2008), <http://www.foxnews.com/politics/2008/12/31/lenders-loopholes-virginia-law-limiting-payday-loans/>.

payday line of credit needs only a single authorization from the consumer. That credit line can go on indefinitely as long as the consumer uses it.

Payday lenders have used open-end loans have been used in attempts to evade state rate caps. Advance America – which also sells a NetSpend prepaid card – previously offered an open-end line of credit product called the Choice Line of Credit, an open-end line of credit of up to \$500 at 6 percent interest along with a monthly participation fee of \$150. Pennsylvania claimed that the fee structure was designed to evade the state’s usury law. In February 2015, Advance America agreed to a settlement of \$8 million in restitutions and was required to forgive approximately \$12 million in unpaid balances.¹³⁷

All Credit Lenders offers an open-end line of credit that uses the consumer’s debit card as an access device. The lender advertises a 24% APR, but also charges an “account protection fee.”¹³⁸ The Illinois Attorney General has sued, alleging that the most, if not all, borrowers were enrolled in the account protection fee and that the additional fee – at least \$11 for every \$50 outstanding balance – was used to shroud the true cost of borrowing.¹³⁹

Payday lenders are also active in state legislatures seeking authorization for high-cost open-end lines of credit. In Arizona, for example, the industry is pushing a “Flex Loan” bill that purports to carry a 36% interest rate but that also has “customary” fees up to one-half of one percent *per day*.¹⁴⁰ With fees included, the true APR is 218.5%. Yet due to loopholes in Regulation Z,¹⁴¹ it is possible that only a 36% APR will be disclosed, misleading consumers.

While payday lenders will be eager to link these open-end payday loans to their own prepaid cards, the lenders are first and foremost in the loan business. They will be willing to tie their loans to whatever asset account the consumer has. But if an open-end payday loan is eligible to be linked to any asset account that permits preauthorized ACH debits, those credit lines will be outside the proposed rules – *even when the payday lender encourages the consumer to link the credit line to the payday lender’s own prepaid card*.

Once tied to a particular prepaid card, a payday lender line of credit will operate no differently than a credit line that is designated for a particular prepaid card at the outset. If the credit line is accessed through overdraft (which we urge the CFPB to prohibit), it will be covered by the proposed rules. But if credit is pushed from the credit line to the card, the consumer will have almost none of the credit card protections that the “particular card” credit lines – such as a 30-day waiting period, ability to pay, fee

¹³⁷ Boyle, Jim. “Advance America Agrees to \$8M Settlement with Pennsylvania.” *Legal Newsline Legal Journal*. February 12, 2015. <http://legalnewsline.com/news/254880-advance-america-agrees-to-8m-settlement-with-pennsylvania>.

¹³⁸ See <https://www.allcreditlenders.net/#>.

¹³⁹ Complaint for Injunctive and Other Relief, Illinois vs. CMK Investments, Inc. DBA All Credit Lenders, Inc., (Cir. Ct. of Cook Co., IL, filed Mar. 18, 2014), http://www.cfpbmonitor.com/files/2014/03/ALL_CREDIT_LENDERS_03-18-2014_16-26-531.pdf.

¹⁴⁰ See Arizona General Assembly HB2611 “Consumer Flex Loans,” <http://www.azleg.gov/legtext/52leg/1r/bills/HB2611P.pdf>.

¹⁴¹ Treatment of these fees under Regulation Z is unclear. The fees would be included in the advertising APR only if they are considered *both* a finance charge and a periodic rate. Lenders may argue that the fee is a participation fee, which is not a finance charge. Or they may charge the fee as a flat fee and not as a periodic rate.

limits in the first year, or monthly payments.¹⁴² That is, payday lenders will be able to sell prepaid cards simultaneously with the credit lines in order to enable easy access to predatory, high cost credit with few protections. Instead, the rules should cover all credit lines that are linked to prepaid cards under the credit card rules, if the creditor reasonably anticipates the credit line will be accessed by prepaid cards.

3. Third parties will develop high-cost credit lines for prepaid cards.

In addition to payday lenders, other third parties and technology companies will develop credit lines for prepaid cards that can be added to any card. History has examples of such high cost prepaid card credit lines offered by third parties and not by the program manager of a particular card.

The tribal online lender Mobiloans claims to offer “credit ... without the card,” but uses the consumer’s ATM card as an access device for “cash” loans.¹⁴³ The credit can be used to “Avoid overdraft fees.”¹⁴⁴ Loans are deposited to the consumer’s account with “Easy, Automatic Payments... Just set up AutoPay with your checking account, and your payments will come out automatically on your scheduled due date.”¹⁴⁵ Only by digging deep into the terms and conditions is it possible to see that payments can also be made by check – if the consumer is willing to accept each advance on the credit line by waiting for a mailed check.¹⁴⁶ Loan contracts disclose a 0% APR and charge a draw fee of approximately 15 % of the principal dispersed, along with a periodic monthly finance fee based on the amount of the outstanding principal due. For example, an outstanding principal of \$200 would incur a monthly finance fee of \$25.¹⁴⁷

A few years ago, Account Now developed an iAdvance deposit advance product that was available on NetSpend prepaid cards issued by MetaBank. The Office of Thrift Supervision shut it down after finding unfair or deceptive practices.¹⁴⁸ But entities like AccountNow or MetaBank could develop an updated credit line today and enable consumers to pair it up with different prepaid cards.

In another example, SureCashXtra, owned by the Chippewa Cree Tribe, offered a payday loan feature that could be appended to multiple prepaid cards.¹⁴⁹ The lender’s website was consumer-facing and did

¹⁴² The credit lines would, however, still be covered by the ban on mandatory repayment by electronic fund transfer, Reg. E § 1005.10(e)(1), including transfers accomplished through offset, Reg. E § 1005.3(c)(5); NCLC, Consumer Banking and Payments Law § 5.1.3.7.

¹⁴³ <https://www.mobiloans.com/>.

¹⁴⁴ <https://www.mobiloans.com/how-it-works>.

¹⁴⁵ *Id.*

¹⁴⁶ See <https://www.mobiloans.com/terms-and-conditions>.

¹⁴⁷ See <https://www.mobiloans.com/what-it-costs> and Mobiloan contract dated January 7, 2014 on file with Consumer Federation of America.

¹⁴⁸ See Meta Financial Group, Inc., Form 8-K, Securities and Exchange Commission File No. 0-22140 (Oct. 6, 2010). MetaBank was ordered to pay restitution to the cardholders. See Andrew Johnson, “OTS to Require Meta to Reimburse Loan Customers,” *American Banker* (Jan. 5, 2011), <http://www.americanbanker.com/news/meta-financial-ots-1030873-1.html>.

¹⁴⁹ See “SureCashXtra: A Facility for a Prepaid Card with Credit,” *Bank Talk* (July 25, 2012), <http://banktalk.org/2012/07/25/surecashxtra-a-facility-for-a-prepaid-card-with-credit-with-credit>. As discussed at greater length in the next section, the credit feature was available on any prepaid card that used a transaction processor that enabled SCX on its system.

not limit the loan deposits to a particular card.¹⁵⁰ Although the credit feature worked through overdraft, and overdraft credit is covered by the proposed rule, it would be simple enough to change the product into push credit under a deposit advance model instead of pull credit.

Today, mobile apps wallets could enable such prepaid card credit features. A lender could design a wallet that could hold whatever prepaid card the consumer chooses and could be used to transfer money from the credit line to the prepaid card. The credit line would have no access device of its own and would be marketed to prepaid cardholders and depend on the prepaid card as an access device. Or, it could be designed with a particular prepaid card in mind and offered to those consumers but permit them to add other accounts as well. But the fact that the lender did not specify a particular prepaid card would take the credit line out of the proposed rules.

Here again, credit lines that are offered for access through prepaid cards should be treated as credit cards under the proposed rules.

4. Payment processors will develop prepaid card processing platforms that incorporate credit features that can be triggered for multiple cards.

Prepaid card program managers rarely develop credit features on their own. Rather, those features are part of the payment processing platform that the cards rely on. Once embedded into a processing platform, the feature is potentially available for any card that uses that platform.

As noted above, a few years ago the tribal payday lender SureCashXtra developed a payday loan that functioned through overdraft on a prepaid card. As the payday lender's website described it in the FAQs:

Each branded prepaid debit card has a transaction processor that evaluates and completes ATM and Point of Sale Signature transactions that are performed on their cards. The transaction processor for your prepaid card must allow SCX [SureCashXtra] to be enabled on their system.¹⁵¹

A similar push-credit feature that does not rely on overdraft could be embedded into a prepaid card payment processing platform.

Indeed, before the banking regulators issued their guidance on bank payday loans, payment processors were embedding deposit advance features into their demand deposit account (DDA) processing platforms. Both Fiserv and FIS were promoting deposit advance loans as a feature to enhance revenue.¹⁵² Any bank that used their processing platform could enable the credit feature on their DDA accounts with a flip of a switch. Bank payday loans were poised to spread dramatically to hundreds if not thousands of banks that used the Fiserv, FIS and other platforms that enabled deposit advance.

¹⁵⁰ The FAQs on the website spoke about "your prepaid card." See NCLC Prepaid ANPR Comments at 7-8 (citing website that is no longer operational).

¹⁵¹ See NCLC Prepaid ANPR Comments at 7-8 (citing websites that are no longer operational).

¹⁵² See Fiserv, Press Release, "Fiserv Unveils Relationship Advance" (Nov. 18, 2009), <http://investors.fiserv.com/releasedetail.cfm?ReleaseID=425106>; Lee Kremin & Shawn Rudisill, FIS, "Navigating the Changing Tides Impacting Fee Income: Taking a Proactive Approach to Shifting Market Conditions" at 15 (2011), http://www.fisglobal.com/cmspub/groups/public/documents/document/mvp0_016925.pdf.

Notably, processors have separate platforms for prepaid card accounts and DDAs. Some processors actually specialize in the prepaid industry, and others offer both but on separate platforms.¹⁵³ Thus, a deposit advance or other credit feature built into a prepaid card platform would only impact prepaid cards, and a credit feature on a DDA platform would only affect DDA accounts.

A payday lender or a high-cost online lender that wanted to integrate its credit feature into multiple prepaid cards could do so through a payment processor without restricting the feature to a particular card. The feature would be available to any prepaid card that uses that platform and wanted to turn it on.

In this scenario, there would be no direct contact between the lender and the prepaid card program manager (or issuer), even though the program manager would be fully aware that its cards have a credit feature and who the creditor is. The prepaid card program manager's relationship would be with the processor and so would the creditor's.

Consumers could learn about and incorporate the credit feature to their prepaid card in one of two ways. First, the prepaid card could promote it for use in connection with that card. In that instance, the credit feature should fall under the "particular card" provision.

However, the consumer could also learn about the credit feature from lender marketing or a lender website that is not restricted to a particular card. For example, the lender's website could say: "Get your money instantly on hundreds of prepaid cards. Search here to find out if instant access is available for your card." Actually adding the credit feature would require some cooperation from the prepaid card. But the lender could facilitate the communications to ensure that the prepaid card enabled the credit functionality on a particular consumer's card. Once the consumer entered her card information into the lender's website as part of an application, the lender could communicate to the payment processor, which in turn could communicate to the program manager to turn on the credit feature. Alternatively, the lender could tell the consumer to "ask your prepaid card to turn on SCX credit."

The lender could even solicit consumers who do not yet have a prepaid card that enables the credit feature. The lender could act as a lead generator for those prepaid cards, encouraging consumers to "apply now." In fact, it is possible that a single application to the lender could serve as both an application for a loan and for a prepaid card.¹⁵⁴

When the consumer learns about the credit line from the lender, the lender would not be specifying a particular card. The lender's loans would not even have to be limited to prepaid cards that enable the credit feature. The lender could also offer the option of direct deposit to any asset account the consumer has. Accessing the loan through a prepaid card feature would just be an option – perhaps faster and cheaper, perhaps no different. Yet, once enabled, the credit feature would work in an

¹⁵³ See <http://paybefore.com/pay-connect/processors/>.

¹⁵⁴ One obstacle to this concept is that a lender is unlikely to be willing to make a loan that is repaid from a brand new prepaid card account, especially one that does not have direct deposit set up or a track record of holding regular income. But switching the consumer's direct deposit could be part of the application process, or the credit feature would not become functional until a certain amount of income was deposited to the card. Or, the lender could require ACH authorization to a checking account as a back-up mechanism. As technology and alternate underwriting models develop, other methods of making loans coupled with newly issued prepaid cards could emerge.

identical fashion to a “particular card” feature to permit credit transactions for that card. It would be immaterial whether the consumer came to the credit feature independently or instead through an offer from and limited to a “particular card.”

Arguably, once the credit feature was turned onto a particular card, it would fall into the “particular card” rule if the consumer could only access the credit through that card. But payment processors and lenders could design the feature so that it would also enable direct deposits to other accounts even if, as discussed in the next section, the consumer was unlikely to have those other accounts. The credit line could permit transfers to any card number or ACH number that the consumer supplied. But a consumer who has added a credit feature to a particular card would be unlikely to have or want to use another asset account for purposes of receiving the credit.

Processors would receive income from prepaid cards that pay to use the credit feature of the platform, and processors would promote the features the same way they promoted deposit advance: as a revenue generator for the prepaid cards. This dynamic could lead to the same back-end pricing and race-to-the-bottom that the proposed rules are trying to avoid.

5. Prepaid card providers will develop credit lines for their own cards with other access points that are more theoretical than real.

Under the proposed rule, prepaid card providers could develop credit lines designed primarily for use with their own cards but with the theoretical possibility that the credit can be deposited into another asset account. As long as the credit line can be deposited directly to another asset card, it would not be covered by the proposed rules as a credit card. This creates a huge opportunity for evasion.

For one thing, as both the CFPB and these comments have noted, many prepaid card holders have these cards precisely because they were driven out of the banking system due to overdrafts. They may choose not to have bank accounts due to overdrafts or may be prevented from opening accounts due to the ChexSystems blacklist. The theoretical possibility that funds from a credit line could be transferred to a bank account is entirely meaningless to consumers who do not have a bank account and in some cases cannot obtain one.

Thus, a program manager could offer a credit line marketed to its cardholders that operates seamlessly with that card. Credit could be transferred to the card instantly through internal accounting with no delay or charge. In order to escape the proposed rule, the creditor could also design the credit account so that it permitted direct deposits to other asset accounts through the ACH system, despite the fact that few if any its borrowers actually have ever deposited the accounts to a bank account and most of its borrowers do not even have a bank account. Another barrier to transfers to a bank account is that ACH deposits normally require a day or two to post, whereas transferred funds can be made available instantly. The creditor could even charge for those ACH transfers to other accounts, as many prepaid cards do. Thus, even consumers with a bank account would be discouraged from accessing the credit other than through the prepaid card.

This is not just a theoretical possibility. A few years ago, the same prepaid card provider that issued the CheckSmart prepaid card payday loans had another prepaid card called the Tandem Money MasterCard.¹⁵⁵ That card had a linked line of credit and a linked savings account called Tandem Money.

¹⁵⁵ See NCLC Prepaid ANPR Comments at 6-7.

Advances on the credit line – at a cost of 292% to 365% for a 10-day advance – could be deposited onto two different Insight prepaid cards. In theory, the funds could also be accessed by ACH transfer to a bank account or a wire remittance transfer. But Tandem Money delayed access to the funds for five days if those options were selected, thereby steering consumers into prepaid card transfers.¹⁵⁶

Credit lines that are designed to be accessed through a prepaid card should receive credit card protections just like exclusive push credit line. Consumers have no less need of protection even if there is theoretically another way to access the credit account.

6. The addition of a savings account would bring a prepaid card out of the proposed rule.

Finally, all a prepaid card provider would have to do to escape the current rule is to add a savings account. NetSpend already offers linked savings accounts. The NetSpend Savings Account is made available to NetSpend cardholders through MetaBank, BofI Federal Bank and The Bancorp Bank.¹⁵⁷

While the NetSpend savings account was not designed to evade the CFPB's prepaid card rules, it could be used for that purpose. Under the proposed rule, a credit line that is linked to a prepaid card account is considered to be a "credit card" only if it "allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than the particular prepaid accounts specified by the creditor."¹⁵⁸ If NetSpend created a credit line and permitted consumers to transfer funds from the credit line to either the prepaid card account or to a savings account – which is an "asset account other than the particular prepaid account" – the credit line would appear to be exempt from the proposed rules.

Evasions could happen if different banks serve as the prepaid card issuer and the holder of the savings account. The now-defunct Tandem Money prepaid card, issued by Urban Trust Bank, had a linked savings account offered by Premier Bank of Iowa.¹⁵⁹ NetSpend also has relationships with at least three different banks.

The fact that a prepaid card-linked line of credit also offers the theoretical option to directly deposit extensions of credit into a savings account would be a particularly strange reason for excluding the credit line from the proposed protections. Borrowing money or the purpose of depositing it into a savings account -- even one that paid the high 5% APY on the NetSpend Savings Account – would make no sense. Plus, savings accounts are designed, by regulatory requirement and sometimes by policy, to be "inconvenient" to access.¹⁶⁰

¹⁵⁶ See Your TandemMoney Savings Account and Line of Credit Agreement § 2.8 (effective Jan. 2012) (TandemMoney T&C), available by clicking on the link for the terms and conditions within the Fee Summary, http://www.insightcards.com/images/uploads/120502_FeeSummary.pdf (last visited 3/9/15).

¹⁵⁷ See https://www.netspend.com/how_it_works/managing_your_money.shtml (note 1).

¹⁵⁸ Proposed Reg. Z § 1026.2(a)(15)(vii); see *id.* § 1026.2(a)(15)(ii)(C)(2).

¹⁵⁹ NCLC Prepaid ANPR Comments at 6.

¹⁶⁰ "Regulation D requires that an account, to be classified as a 'savings deposit,' must not permit more than six convenient transfers or withdrawals per month from the account. Transfers and withdrawals that are considered 'convenient' for this purpose are those made by preauthorized, automatic, telephonic agreement, order or instruction, or by check, debit card, or similar order made by the depositor and payable to third parties. 12 CFR 204.2(d)(2)." Fed. Reserve Board, Consumer Compliance Handbook, Regulation D, Reserve Requirements at 1, http://www.federalreserve.gov/boarddocs/supmanual/cc_h/int_depos.pdf.

Certainly, the CFPB does not intend this rule. The CFPB can and should exclude savings deposits from the “asset account” options that take a line of credit out of coverage. But the Bureau should not stop there. This example should serve as a reminder about how easy it will be to evade the “particular account” rule through the mere existence of another asset account option.

B. Credit lines that the creditor knows are likely to be accessed through a prepaid card should be covered by credit card rules.

1. Prepaid card lines of credit can be defined more broadly.

The CFPB should close the “particular card” loophole. Credit that is likely to be accessed through a prepaid card should be covered by the proposed prepaid card credit rules whether or not it is limited to a particular card.

Proposed Regulation Z § 1026.2(a)(15)(vii) should be revised to define a “prepaid card line of credit”¹⁶¹ and to provide that such credit lines are credit cards covered by the Regulation Z credit card rules, including the CARD Act rules, and also by the Regulation E and Regulation Z rules that are proposed to apply to account numbers linked to particular cards. The definition would read:

Prepaid card line of credit means an account number that is not a prepaid card that may be used from time to time to access a credit plan where the extensions of credit are directly deposited or transferred into, or otherwise accessed from, a prepaid account, where the creditor either:

- 1) is the same institution as or has a business relationship with the prepaid card issuer, program manager or payment processor, or
- 2) reasonably anticipates that a prepaid card will be used as an access device for the line of credit.

Like the CFPB’s proposal, this definition starts with the requirement that credit can be directly deposited to the prepaid card. That is, the prepaid card is being used as an access device for the credit. In addition, the creditor has reason to know that access through a prepaid card is likely due to either a business relationship with the prepaid card or other circumstances.

The business relationships test is aimed at situations in which the creditor and the prepaid card issuer may not be the same entity but they have a close relationship – either directly, or through the program manager or payment processor. That relationship, combined with a credit line designed to be accessible through a prepaid card, makes it appropriate for protections to apply to the inevitable linkage between the credit line and the prepaid card.

Examples of such business relationships (which might be directly between the prepaid card issuer and the creditor, or might operate indirectly, i.e. through the payment processor) include:

¹⁶¹ Regulation Z would be much easier to read if the CFPB uses a shorter, more intuitive term such as “prepaid card line of credit” instead of “account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.”

- 1) Affiliates or overlapping ownership.
- 2) Marketing relationship: The prepaid card provider markets the credit line or gives the creditor access to prepaid card customers for marketing purposes.
- 2) Sold together: The same entity offers the prepaid card and the credit line, such as in a payday loan store or on the same website.
- 3) Branding: The creditor brands the prepaid card or the prepaid card company brands the credit line.
- 4) Revenue: The creditor gets compensation from the prepaid card provider in connection with the prepaid card or vice versa.
- 5) Payment processing platform: The creditor pays a payment processor to enable that creditor's credit feature on prepaid cards that use a particular platform.

Situations in which the creditor reasonably anticipates that a prepaid card would be used as an access device include credit lines that permit direct deposits to prepaid cards *and*:

- 1) are advertised as being accessible through prepaid cards – either prepaid cards generally, or a list of prepaid cards that use a common prepaid card processing platform. The creditor should reasonably anticipate that the credit line will be accessed through a prepaid card.
- 2) are marketed to prepaid cardholders, such as by marketing to consumers who are on a list provided by a prepaid card company or a list of prepaid cardholders obtained from a credit reporting agency.
- 3) are designed to be used in connection with prepaid cards and to work together. For example, the credit line is enabled on prepaid card payment processing platforms. OR
- 4) do not have another equally convenient access device or equally convenient method of transferring funds to a demand deposit account.

In all of these situations, the creditor intends for the credit line to be used in connection with a prepaid card and for the credit card to function as an access device. It is appropriate in those situations for the creditor to comply with the rules for prepaid card lines of credit.

2. Lenders can distinguish prepaid accounts from other asset accounts in order to comply with rules for prepaid card lines of credit.

The CFPB may have designed the “particular card” restriction in order to prevent unintended consequences for lenders who do not know what type of account the credit is being deposited into. For example, online payday lenders distribute funds and obtain repayment through the ACH system. It is not obvious to the uninformed outside observer looking at a routing and account number – the only information needed to access the ACH system – whether an account is a prepaid account or a DDA. While prepaid cards are primarily used through the 16-digit card number, there is an underlying routing and account number that looks no different on the surface from one belonging to a bank account. Payday lenders would argue that they cannot control or know what type of account it is when the consumer enters that number into its website.

However, to the contrary, we understand that it is already possible to know with a high degree of certainty that a particular account is a prepaid account. Various industry players already have reasons to want to know that information. Systems are in place now and will develop in the future to assist lenders and others who need to distinguish between prepaid accounts and other asset accounts.

At the outset, it is important to remember that the proposed rules only apply to “open-end” credit plans. Payday loans are typically closed-end loans, and closed-end loans would not be “credit cards” or impacted by either the proposed rules or our amendments to the proposal. However, as discussed above, some payday lenders are moving to open-end credit plans. Those plans, by definition, are ones where the creditor “reasonably contemplates repeated transactions.”¹⁶² When a payday lender creates an open-end plan that contemplates repeated direct deposits into an account, the lender can and should determine whether the account is a prepaid account and, if so, comply with the proposed rules as a “credit card.”

A lender can make direct deposits to a consumer’s prepaid account in one of only a few ways.¹⁶³ First, it can use the card network, using the 16-digit prepaid card number. Some payday lenders do this today, as with a “swipe & go” payday loan.¹⁶⁴ Second, the lender can use the ACH system the way most online lenders do, using the same underlying routing and account number that would be used for other direct deposits to the card. Third, the lender can use an application programming interface (API) connection between the lender and the payment processor that authorizes the value load in real time, with funds settling later through the ACH system. Fourth, if the lender and the prepaid card issuer are the same entity, the funds could be transferred as a book-keeping function within the issuer’s accounts.

The 16-digit card number reveals whether a card is a prepaid card. Every number begins with a six digit “bank identification number” (BIN) that not only identifies the issuing bank but also reveals what type of card account it is. Services exist to help merchants identify types of cards in order to address fraud and other risks. For example, BinDB’s website explains:

The first six digits of the BIN provide the most vital identification of the user that helps you validate an order. Most importantly, it provides the name of the issuer bank and the country of its origin. It provides information whether the card is a credit, debit, or a prepaid card.¹⁶⁵

BinDB specifically promotes its BIN Database as a service for identifying prepaid cards: “IDENTIFY PREPAID, GIFT AND VIRTUAL CARDS. Checking prepaid cards can help you to protect from fraud.”¹⁶⁶

Second, the routing and account numbers used for an ACH transaction also reveal important information that can lead to a fairly confident, if not 100% certain, assessment of whether the account number belongs to a prepaid account. The routing number identifies the bank and is easily findable on the Federal Reserve Board’s website and through other services.¹⁶⁷ Some banks, such as Green Dot Bank, MetaBank and Bancorp, are primarily prepaid card issuers, and the chances are high that an account number from one of those banks is a prepaid account. Even for banks that do both, the banks

¹⁶² Reg. Z, 12 C.F.R. § 1026.2(a)(20).

¹⁶³ The following discussion is accurate to the best of our knowledge and is based on conversations with industry participants. But of course there are others who have more expertise in the payment processing for prepaid cards and could confirm or correct the details.

¹⁶⁴ “Speedy Cash® offers Swipe & Go(SM) debit card payday loans to simplify the loan process. We’ll simply ‘swipe’ your debit card and lend you the cash you need until your next payday. Swipe & Go debit card loans provide a quick and reliable payday solution.” <https://www.speedycash.com/store-services/debit-card-loans/>.

¹⁶⁵ <https://www.bindb.com/verify-card-details.html>.

¹⁶⁶ <https://www.bindb.com/>.

¹⁶⁷ See Federal Reserve Bank Services, E-Payments Routing Directory, <https://www.frbservices.org/operations/epayments/epayments.html>.

may cluster their account numbers in ways that industry insiders can learn in order to distinguish DDA accounts from prepaid accounts.

Indeed, payday lenders and others already build models to attempt to identify prepaid accounts based on the routing and account number. Payday lenders must have some way today of rejecting loans to consumers whose prepaid accounts do not permit ACH debits. Otherwise, the ACH credit would go through with the loan deposit but the payday lender would not be repaid. Indeed, we are aware of a researcher who has attempted to take out multiple payday loans but has been unsuccessful when using prepaid cards and successful only when using bank accounts.

Other entities are also working towards ways to identify prepaid account numbers in order to address fraud and risk issues. One e-commerce operator posted the question: "Is there a database or list of routing numbers for Prepaid Debit Cards Banks with Direct Deposit capability?...We need to block these 'banks' from our ecommerce website as they are delaying or losing transactions. I'd like to create and share a comprehensive list of routing numbers to prevent other developers from the same headache."¹⁶⁸

Moreover, a lender that uses the ACH system could simply ask the consumer for the debit or prepaid card number. Even if the lender is not planning on processing the transaction through the card network, the card number will reveal the type of account. The lender could also ask the consumer what type of account it is, the way consumers today are often asked whether an account is a checking or savings account before setting up direct deposit of a tax refund or other payment. But it would be more accurate to use the card number to identify the type of account.

Third, if a loan is enabled through a credit feature on a payment processing platform, the creditor already knows that the platform is used for prepaid cards. As discussed above, processors use different platforms for prepaid and DDA accounts.

Finally, it is possible that the lender and prepaid card issuer will be the same institution and will simply create a bookkeeping entry to transfer the funds from one account to another. In that case, the institution certainly knows what type of account it is. It is possible that the same institution would be involved on both ends even if the credit line is not limited, at least in theory, to the financial institution's own prepaid cards. Note that nonbank lenders have a strong incentive to create lending platforms where the credit originates from a depository institution in order to take advantage of interest rate exportation and avoid state usury caps.

Our proposal for closing the "particular card" loophole would limit the credit card rules to credit lines that use prepaid cards as access devices in situations in which the creditor knows that the linkage is likely to happen. In those situations, it is appropriate and workable to ask the creditor to verify what type of account it is before lending funds. If it is a prepaid account, the lender simply needs to comply with credit card rules. The rules that would apply in those situations are appropriate and are not difficult to comply with. They simply require appropriate underwriting for ability to pay, honest pricing, reasonable time to make payments, and clear separation between the prepaid card and the credit line. Credit offered through prepaid cards should not escape those requirements simply because the creditor avoids specifying exclusive access through a "particular card."

¹⁶⁸ <http://www.quora.com/Is-there-a-database-or-list-of-routing-numbers-for-Prepaid-Debit-Cards-Banks-with-Direct-Deposit-capability>.

3. The Commentary can provide examples of prepaid card lines of credit.

Using the definition of “prepaid card line of credit” that we propose, the Commentary could provide the following examples of different relationships between creditors and prepaid cards that would, or would not, result in the credit line being deemed a prepaid card line of credit.

1. *Payday lender with prepaid cards and open-end payday loans.* A payday lender sells prepaid cards and also offers open-end payday loans. The payday lender receives compensation from the prepaid card company when cards are sold and/or when consumers set up direct deposit on the cards. The payday lender offers consumers the option of drawing on the credit line by visiting the store and accepting cash or by linking the credit line to the consumer’s existing checking account or to a new payday lender prepaid card account.¹⁶⁹ If the credit line is linked to the consumer’s prepaid card account, the consumer can transfer funds to that account by telephone, through a mobile app or online. If the credit line is linked to the prepaid card, it is a prepaid card line of credit because there is a business relationship between the payday lender and the prepaid card provider. In addition, the payday lender should reasonably anticipate that a purchaser of the prepaid card would access the credit line through the card because the payday lender offers that functionality (even though the consumer also has the option of accessing cash at the payday store).

2. *Payday lender that links its open-end payday loans to unrelated prepaid cards.* A payday lender that offers open-end payday loans does not sell prepaid cards, but it markets its credit lines as being accessible through prepaid cards. For a consumer who links the line of credit to a deposit or prepaid card account, deposits and repayments are made through the ACH system. When setting up the line of credit to be accessed by ACH, the lender asks the consumer for the routing and account number and also the associated debit or prepaid card number. Both the routing number and the card number confirm that the account is a prepaid account. The credit line is a prepaid card line of credit because, by marketing the credit line as accessible through a prepaid card, the creditor should reasonably anticipate that it would be accessed that way and the creditor can confirm the type of account for a given customer.

3. *Online open-end payday loans.* A company offers open-end lines of credit over the internet. The credit can be directly deposited into any prepaid card or checking account using the ACH system. The company markets to prepaid cardholders and describes on its website that prepaid cards are eligible. The credit line is a prepaid card line of credit when linked to a prepaid card.

4. *Open-end payday loan accessible through overdrafts or direct access through payment processor.* A company offers open-end lines of credit that can be accessed through overdraft or through transfers to a prepaid card. The credit lines may be linked to any prepaid card that uses a transaction processor that has enabled access to the credit line on its prepaid card processing platform. The creditor has set up relationships with several payment processors to enable credit access to prepaid cards. The creditor should reasonably anticipate that consumers will access the credit through a prepaid card.

¹⁶⁹ Under the rules as proposed by the CFPB, the prepaid card account could be opened simultaneously with the credit line. However, under our proposal, the payday lender would have to wait 30 (or 90, as we suggest) days after the prepaid card was registered before permitting the credit line to be accessed through the prepaid card.

4. *Payroll card vendor with open-end credit lines.* A company offers payroll cards and also open-end lines of credit offered through employers. The credit lines are available to any employee who has direct deposit and are repaid by preauthorized ACH unless the employee agrees to pay a higher interest rate. Once the credit line is linked to a deposit account, the employee may access future draws by transferring funds to that account. By offering the credit lines through an employer that uses the vendor's payroll cards, the company should reasonably anticipate that some consumers will access the credit line through a payroll card, and therefore the credit line is a prepaid card line of credit when accessed through those cards. The payroll card vendor also is the same as, or has a business relationship with, the creditor and can confirm whether a particular account is a payroll card account.

5. *Prepaid card with affiliated credit line.* A company issues prepaid cards and also offers open-end lines of credit extended by an affiliate. The credit lines are marketed only to holders of the company's prepaid cards. The credit lines may be accessed by transferring funds to the company's prepaid cards, in which case funds are available immediately, or by transferring funds to an unrelated deposit account through the ACH system, in which case funds are available when the transaction settles in one to three days. If a consumer accesses the credit line by transferring funds to a prepaid card account at that company, it is a prepaid card line of credit. The creditor has a business relationship with the prepaid card company. In addition, because the credit is marketed directly to prepaid card holders and the credit is much more easily accessed through the prepaid card than through an unrelated deposit account, the company should reasonably anticipate that the credit will be accessed that way.

6. *Prepaid card issuer that offers savings accounts and credit lines.* A nonbank prepaid card issuer offers savings accounts at partner banks and its own open-end lines of credit to its prepaid cardholders. Transfers may be made between any of these accounts. The credit may be directly deposited to the prepaid card or to the savings account. The credit line is a prepaid card line of credit because the same institution is offering both the prepaid card and the credit line. In addition, the creditor should reasonably anticipate that the credit line will be accessed through the prepaid card because transfers may be made between the two; because a prepaid card is the more likely way to access credit than a savings account; and because Regulation D does not permit savings deposits to have convenient withdrawals.¹⁷⁰

7. *Credit union offering checking, prepaid and open-end credit accounts.* A credit union offers checking accounts, prepaid card accounts and open-end lines of credit. A consumer may link a credit line to a prepaid card account or a checking account. However, the credit line may be accessed through an overdrawn transaction only if the credit line is linked to a checking account. The credit line is a prepaid card line of credit if the consumer links it to a prepaid card account because the card and the credit line are offered by the same institution. In addition, the credit union should reasonably anticipate that credit will be accessed through a prepaid card when it offers a credit line to one of its own prepaid cardholders and permits transfers from the credit line to the prepaid card. The credit line would not be a prepaid card line of credit if the

¹⁷⁰ Regulation D requires that an account, to be classified as a "savings deposit" (and therefore exempt from the reserve requirements for "transaction accounts"), must not permit more than six convenient transfers or withdrawals per month from the account. Transfers and withdrawals that are considered "convenient" for this purpose are those made by preauthorized, automatic, telephonic agreement, order or instruction, or by check, debit card, or similar order made by the depositor and payable to third parties. 12 CFR § 204.2(d)(2).

customer only has a checking account and no prepaid card, or if the credit may not be transferred from the credit line to the prepaid card.

8. *Unrelated prepaid card and credit card.* A consumer has a prepaid card and also has a credit card obtained from an unrelated third party. The consumer can deposit funds from the credit card onto the prepaid card by writing herself a convenience check and depositing it into the prepaid card account. The credit card is not a prepaid card line of credit because funds cannot be directly deposited to the prepaid card account.

9. *Unrelated prepaid card and credit union line of credit.* A consumer has a prepaid card and also has a line of credit from an unrelated credit union. The line of credit permits transfers to other accounts through the ACH system. The credit union does not market to prepaid cardholders and does not promote use of its credit line in connection with prepaid cards. The credit union line of credit is not a prepaid card line of credit because the credit line is offered by an unrelated party and the credit union would not reasonably anticipate that the credit would be accessed through a prepaid card.

10. *Related prepaid card and credit card.* A bank issues both prepaid cards and credit cards. It markets its credit cards to its prepaid card customers and to the general public. The credit card may be used through its own access device or credit may be transferred instantly from the credit card account to the bank's prepaid card account. The credit card also has both paper convenience checks and "e-checks" that can be deposited into any deposit account through the ACH system. The bank has issued the same consumer a credit card account and a prepaid card account. The credit card is a prepaid card line of credit because there is a business relationship between the credit card issuer and the prepaid card issuer. By designing its credit cards so that funds may be transferred to its prepaid cards, the bank should also reasonably anticipate that some consumers will do so. The credit card may not be offered to its prepaid cardholders until 30 days have passed after the prepaid card is registered.

11. *Related prepaid card and faux credit card.* Same scenario as above, except that the credit card does not carry a network brand and is not broadly usable. Instead, it may be used to purchase items from a catalog or website specified by the company, or credit may be transferred instantly from the credit card account to the prepaid card account. The credit card has both paper convenience checks and virtual ones that can be deposited into any deposit account through the ACH system. Because the same company offers both the prepaid card and the faux credit card, and because the alternative means of accessing the credit card are unlikely to be used by consumers, the credit card is a prepaid card line of credit and may not be offered to the consumer for the first 30 days after the prepaid card is registered.

12. *Related prepaid card and online, virtual credit card.* A company issues prepaid cards and also offers an open-end line of credit. The credit line may be accessed through an account number that is usable directly online for purchases of goods and services; through transfers to the company's prepaid card accounts; and through cash advances deposited through the ACH system into third party deposit accounts. The credit line is a credit card that falls under the CARD Act rules under Regulation Z today, but it is not a traditional plastic credit card. The credit line is a prepaid card line of credit if held by a consumer who holds the company's prepaid card. There is a business relationship between the prepaid card issuer and the creditor, and by permitting transfers between the two, the creditor should reasonably anticipate that some

consumers will do so. The credit line may not be offered to the consumer until 30 days after the consumer registers the prepaid card.

In all of the scenarios described above, the credit line is deemed a prepaid card line of credit only in situations in which either (1) there is enough of a relationship between the provider of the credit line and the provider of the prepaid card to expect compliance with the rules, or (2) the creditor clearly designs the credit product to be used with prepaid cards.

In most of the examples, the credit line is unusable without an access device and the prepaid card becomes that access device. The existence of another direct deposit option – which takes the cards out of the current proposed rules – is more theoretical than real. Either using another account is cumbersome, or the credit is being offered to consumers who have prepaid cards and that is the account they are likely to use (and perhaps the only account they have).

These credit lines would function no differently than a similar credit line offered by a company that permitted direct deposits only onto a particular specified prepaid card. But if the “particular card” loophole in the proposed rule is not closed, consumers in most of the scenarios above would receive none of the protections that would cover “particular card” credit lines. It is also likely that companies will design their credit lines as described above – or in another fashion that we cannot presently contemplate – to evade the proposed protections.

If there is another access device, the credit line may already be a “credit card,” covered today under the Regulation Z CARD Act rules.¹⁷¹ Treating these credit lines as prepaid card lines of credit adds only three additional rules that are both important and unlikely to be problematic: the 30-day waiting period, the credit disclosure on the prepaid card short form, and payments no more frequently than monthly. The company could avoid those rules simply by not permitting direct transfers between the credit card and the prepaid card. Direct transfers between the credit card and the prepaid card are likely to be important only if the “credit card” is in fact not a traditional credit card but rather one that is not widely usable. For example, the linkage could be critical for a very small credit line that is primarily designed to be used through the prepaid card even though it has an access device that can be used separately, such as an account number that can be used for internet purchases at select merchants.

In short, our suggested revision of the proposed rule would ensure appropriate, consistent treatment of credit lines linked to prepaid cards. The evasion scenarios described above are likely to arise.

4. The “particular card” restriction is not essential to the determination that a credit line is a prepaid card.

Both Regulation Z precedent and the CFPB’s current proposed rules demonstrate that exclusive access through a particular card is not essential to the decision to subject a credit line to credit card rules. Rather, credit lines have been or would be treated as credit cards even if they could be accessed in another manner or deposited to more than one account.

The definition of “credit card” in TILA is quite expansive, applying to any device that accesses credit. It does not require a card. That definition is “any card, plate, coupon book or other credit device existing

¹⁷¹ That is also likely to be true for other possible scenarios under which a credit line is accessible through an access device apart from the prepaid card.

for the purpose of obtaining money, property, labor, or services on credit.”¹⁷² The Regulation Z definition is similar: “any card, plate, or other single credit device that may be used from time to time to obtain credit.”¹⁷³

Consequently, account numbers have been considered to be credit devices that turn a credit line a credit card. The flexible definition of “credit card” is essential in order to prevent evasions as new technology and new practices change. For that reason, in February 2010, when finalizing the rules to implement the CARD Act,

The [Federal Reserve] Board declined requests from industry commenters to exempt all lines of credit accessed solely by an account number from the definition in § 226.2(a)(15)(ii), noting Congress’ apparent intent to apply the Credit Card Act broadly to products that meet the definition of “credit card.”¹⁷⁴

As the Board further explained:

[T]he Board’s exclusion of HELOCs and overdraft lines of credit accessed by cards is based on the Board’s determination that alternative forms of regulation exist that are better suited to protecting consumers from harm with respect to those products. No such alternative exists for lines of credit accessed solely by account numbers.¹⁷⁵

Later in 2010, however, the Board reconsidered in light of concerns from institutions that “offer general purpose open-end lines of credit that are linked to a checking or other asset account with the same institution.”¹⁷⁶ We understand that these concerns came primarily from credit unions that offer low interest lines of credit that function quite similarly to overdraft lines of credit but are not accessed through overdraft.

At the same time, the Board was concerned about evasions. It noted that “when an account number can be used to access an open-end line of credit to purchase goods or services, it would be inconsistent with the purposes of the Credit Card Act to exempt the line of credit from the protections provided for credit card accounts.”¹⁷⁷ The Board’s compromise was to exempt credit lines accessed by account number unless they could be used to purchase goods or services. At the same time, the Board made clear that if a debit or prepaid card could access a line of credit, even if only to obtain cash, it would be a credit card.¹⁷⁸

The changes that we suggest are consistent with the middle ground that the Board was attempting to achieve. The credit lines that did not pose problems and that the Board was attempting to protect -- general purpose, typically low cost, credit lines linked to a checking account at the same institution -- would not be considered a prepaid card line of credit.

¹⁷² 15 U.S.C. § 1602(l).

¹⁷³ Reg. Z § 1026.2(15)(i).

¹⁷⁴ 75 Fed. Reg. 67458, 67459 (Nov. 2, 2010) (citing 75 Fed. Reg. 7658, 7664-65 (Feb. 22, 2010)).

¹⁷⁵ 75 Fed. Reg. 7658, 7664 (Feb. 22, 2010).

¹⁷⁶ 75 Fed. Reg. 67458, 67459 (Nov. 2, 2010).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*: Reg. Z § 226.2(a)(15)(i).

Our suggested revision would only apply to credit lines when they are accessed through prepaid card accounts and only when it would be fair to apply credit card rules because the creditor could reasonably anticipate such access. For the same reasons that the CFPB appropriately declined to extend the overdraft line of credit exemption to overdraft credit lines linked to prepaid cards, it should also not extend the account number exemption to account numbers linked to prepaid cards. There is nothing in either TILA or the Regulation Z precedent that requires the limitation that an account number linked to a prepaid card is a credit card only if direct deposits can only be made to a particular card specified by the creditor.

Moreover, there is precedent to consider a credit line to be a credit card even if it can be accessed in other ways other than through the card. For example:

The prohibition [on repayment by offset] also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.¹⁷⁹

Similarly, a credit card does not cease being a credit card just because it can be accessed by a convenience check. While the convenience check itself is not a credit card, the existence of a separate access device does not change the underlying nature of the credit card.

The distinction between overdraft credit – which is covered under the proposed rules even if the creditor offers it on more than one card – and account number “push credit” is also not essential to the determination that a credit line is a credit card. Under both the current Regulation Z rules and the proposed rules, an account number that directly accesses a credit line to purchase goods and services is a credit card.¹⁸⁰ An account number that uses a two-step process to first deposit the funds to a particular prepaid card and then spend it would not be, unless the credit is limited to a particular card. But with evolving technology, that two-step process will become increasingly seamless.

Moreover, both the CFPB’s proposed rules and the early 2010 version of Regulation Z recognize that a credit line can be a credit card even if a two-step process is required to access the credit. Under the early 2010 version of Regulation Z, an account number was a credit device even if the credit was deposited into a DDA account. The same is true under the CFPB’s proposed rules if the deposit account is a prepaid card specified by the creditor.

In short, the account number exemption in Regulation Z’s current credit card definition is a creature of a policy decision by the Board, not a limitation in TILA or Regulation Z authority. The CFPB can honor that policy decision by leaving the exemption intact for its intended target – credit lines accessed through checking accounts – while declining to extend it to credit lines accessed through prepaid cards.

¹⁷⁹ Official Interpretation to Reg. Z §1026.12(d)(1)-3.

¹⁸⁰ Official Interpretation to Reg. Z §1026.2(a)(15)-2.ii.C.

5. Closing the “particular card” loophole will not adversely impact unrelated credit products.

The CFPB appears to have limited the reach of the proposed prepaid credit rules out of concern that a more comprehensive rule could have unintended adverse impacts on credit lines that are unrelated to the prepaid card. That is unlikely to be the case.

In order to fall under the credit card rules, the credit needs to be an open-end credit plan. Closed end loans transferred to and accessed through prepaid cards would not turn the card into a credit card.¹⁸¹ (However, the CFPB could keep a look out for evasive use of closed-end credit in a recurring way that is more like an open-end line of credit.)

Open-end lines of credit on the market today tend to fall into these categories:

- *Home equity lines of credit (HELOCs).*
- *Credit cards.*
- *Bank and credit union lines of credit linked to checking accounts at the same bank.*
- *Merchant lines of credit, such as credit lines offered by home heating oil.*
- *High cost lines of credit that are attempting to evade usury caps and other consumer protections.*

Other than the last category, these credit lines are either clearly excluded from the proposed rules, already covered by credit card laws, or unlikely to be linked to or accessed through a prepaid card. Thus, closing the loophole for the last category will not adversely impact other forms of open-end credit.

HELOCs: HELOCs and other home-secured credit are outside of TILA’s credit card rules.

Credit cards: Credit cards are already “credit cards” covered by the CARD Act. The only things the proposed rules add are a 30-day waiting period before linking the card to a prepaid card, the monthly payment limitation,¹⁸² and the credit disclosure on the prepaid card short form. If a credit card is offered by an issuer that also offers prepaid cards, or there is a business relationship between the two, then the additional rules should apply. But the proposed rules should not affect unrelated credit cards, as it is difficult to imagine how the credit would be accessed by or through the prepaid card. The only way to load credit onto the prepaid card would be to write a convenience check and manually deposit it into the prepaid card account, and that would not be a direct deposit to the card.

Bank and credit union lines of credit: Traditional bank or credit union account lines of credit that are linked to checking accounts are unlikely to be linked to a prepaid card. The credit lines are also unlikely to offer direct deposit to an outside account. But if they did, they should fall under the “particular card” account number rules. The mere fact that there might be another asset account at that bank into which

¹⁸¹ The CFPB should be alert to the possibility of closed-end loans being offered in connection with prepaid cards. While multi-installment loans are covered by the rule prohibiting mandatory electronic payments, lenders have been adept at evading that rule. Payments could be timed with incoming deposits, like payday loans are, and could trigger transfer fees and ACH fees even if no overdraft credit is used.

¹⁸² This should not be a burden for credit card issuers, because while it is not a specific requirement for credit cards, issuers generally follow this standard already.

the credit could be deposited should not relieve the bank of the obligation to comply with the rules for prepaid card credit when the account is linked to the bank's prepaid card.

Green Dot Bank does offer both checking accounts and prepaid cards, and is planning to offer a line of credit that will be available to both checking account and prepaid card holders. But, as we understand the plan, the line of credit would comply with the proposed rules for prepaid card linked credit plans. Green Dot will underwrite the credit line for ability to pay; it will not have fees that exceed those permitted by the fee harvester provision; payments will be due monthly, at least 21 days after a statement is provided; the consumer will not be required to repay automatically or by offset, but instead can repay by another method; and the credit line will not be offered to new prepaid cardholders, but rather to existing cardholders that have a long enough transaction history to assist in underwriting. It would also be appropriate for Green Dot prepaid cards to carry the disclosure about the option of a credit feature if credit may be offered to holders of a given card and accessed through the card. (As discussed below in Section VIII.A.8, we suggest that the CFPB require two alternative credit disclosures, one for credit features that may be offered through overdraft and one for those than may not, in order to help consumers distinguish between cards where credit may be accessed inadvertently and ones where an affirmative action by the consumer is required.)

Merchant lines of credit, such as for heating oil. Credit offered by merchants (other than retail credit cards – which are already credit cards) is rarely styled as open-end credit. The only consumer-related example of which we are aware of is for heating oil. (We are also aware of merchants that offer lines of credit to businesses.) There may be other examples – such as a restaurant that allows a wealthy customer to run a monthly tab – but it appears unlikely that these types of lines of credit would be accessed through a prepaid card.

High-cost lines of credit. The final category of open-end credit lines on the market today are high-cost open-end lines of credit, often designed to evade usury and other consumer protection law. As discussed above, these are exactly the types of lenders who are likely to link their products to prepaid cards in order to reach struggling consumers and evade the law. These types of open-end credit lines are typically accessed either by cash at storefront or by depositing funds to a deposit account through the ACH system. If a consumer deposits funds to a prepaid card account, the prepaid card is likely to become the primary and probably exclusive access device – and repayment device – for the credit line. It is appropriate in that circumstance for the credit line to be considered a credit card, just as are other credit lines linked to a particular prepaid card. Consumers who access high-cost credit lines through prepaid cards will benefit from the proposed prepaid card credit protections whether or not the creditor specified a particular prepaid card as the access device. Before linking the credit line to a deposit account, the lender could simply ask or determine whether it is a prepaid card.

6. At a minimum, all push-credit used to cover or avoid overdrafts or declined transactions should be covered even if not linked to a particular card.

If the CFPB retains the “particular card” limitation for prepaid card lines of credit, it should at a minimum cover other lines of credit when they are being used by agreement to push funds to cover specific negative balance purchases.¹⁸³ Credit lines can act as overdraft substitutes even when they are not directly accessed through overdraft. This is increasingly possible with modern technology and the growing ubiquity of cellphones and smartphones. There is little difference between a one-step “pull”

¹⁸³ See 79 Fed. Reg. at 77219.

process, where the prepaid card swipe automatically accesses an overdraft line of credit, and a two-step “push” process where, nearly simultaneously, the consumer replies “y” to a text and credit is pushed to cover that overdraft. Today, such a process might take several seconds or a few minutes and require two separate swipes of the card. But it is not hard to imagine a time when the difference between “pull” overdraft and “push” credit nearly ceases to exist.

The push scenario would be covered under the proposed rules only if the credit line could only be linked to a particular prepaid card. But if the consumer had another asset account option for accessing the credit line – even if the consumer did not choose that option or the option was more theoretical than real – the push line of credit would not receive the same protections. Yet in either case, the credit would work identically: the consumer would have a particular prepaid card that was able to and in fact did function as the access device for the credit line.

Certainly, this type of evasion should not be allowed. The CFPB should cover both the overdraft credit and the push line of credit under the proposed rules as a “credit card.” In either case, the credit is operating as an overdraft substitute and the prepaid card is an access device for the credit.

But coverage should not depend on the consumer being prompted to text “Y” to initiate the transfer. The consumer does not need that prompt. The mere fact that the prepaid card transaction was declined will serve as that prompt, and the consumer can then cover the transaction by initiating a transfer herself by telephone call or through a mobile app. That process, too, will likely become ever more seamless as technology evolves.

In other words, for all of the reasons outlined in the sections above, the CFPB should eliminate the “particular” card limitation and cover all lines of credit that are accessed through prepaid cards as credit cards. Just as in the first scenario (where the consumer is prompted to cover a transaction), there is no difference from the consumer’s point of view whether the prepaid card is a “particular” one specified by the credit or whether the consumer could have (but did not) link the credit line to a different asset account. In either case, the consumer is able to use the prepaid card as an access device to use that credit to make a purchase and covered a declined transaction. And in either case, the protections should be the same.

C. Fees harvester cards need more protection.

One of the most important protections that the proposed rule will apply to prepaid cards that access credit is the limitation on fees during the first year of the account to 25% of the credit limit, i.e., the Credit CARD Act’s fee-harvester rule. We strongly support application of the fee-harvester rule to protect prepaid card holders from exorbitant fees. Prior to the Credit CARD Act, vulnerable consumers were charged fees by subprime card issuers that often equaled or even exceeded the amount of credit that the consumers could access, cutting into available credit and distorting the APR.

However, we urge the CFPB to go further than simply applying the fee-harvester rule. First, in order to ensure that prepaid card holders are not gouged after the first year, we urge the CFPB to apply the fee-harvester protections to the entire life of a prepaid card. Second, we urge the CFPB to include pre-account-opening fees in the 25% cap. Third, the CFPB should require that the special available credit line disclosure for fee-harvester cards be made in applications and solicitations for prepaid cards that access credit or prepaid lines of credit.

1. Extend fee protections past the first year.

The fee harvester rule is not a rate cap. A credit card issuer that is not subject to state usury caps, as most are not, may charge whatever rate it wishes. Only fees are limited, not the price. The fee limit serves two important purposes. First, it prevents fees from cutting too deeply into the credit line. Second, it pushes pricing into a periodic interest rate. Compared to fee-based pricing, costs determined by a periodic rate are more proportional to the amount of credit extended and the time it is extended, so cost can be compared more easily to other credit options.

But under the current proposed rule, the creditor could lure the consumer in with low first year pricing and then hike up the fees. Even worse, the creditor could offer a tiny amount of credit, such as a \$10 buffer, the first year in order to get the clock running. After that year is up, the creditor could increase the credit line and hike up the fees without limit.

These tactics would be unfair, deceptive and abusive no matter whom they were directed at, but the ramifications are especially troubling for prepaid cardholders. We urge the CFPB to extend the fee-harvester protections past the first year of the account, to cover the entire life of the prepaid card. The CFPB can use its under 12 U.S.C. § 5531, which permits the CFPB to write rules to prevent unfair, deceptive, or abusive acts or practices (UDAAP),¹⁸⁴ its authority under TILA to adopt additions and exceptions and promote the informed use of credit, and its authority under the EFTA to protect consumer rights and protect consumers using electronic fund transfers.

Prepaid card credit features are very different from traditional credit cards, even fee-harvester credit cards, in a very critical aspect – the cards are often the sole transaction and deposit account to which the prepaid card holder has access. In addition, as discussed above, prepaid cardholders are, by and large, particularly vulnerable consumers who often turn to prepaid cards because they cannot get access to credit cards or bank accounts.

For traditional fee-harvester cards, consumers who cannot afford to pay exorbitant fees or who realize that the card is too expensive -- either during the first year or after even higher fees are imposed in the second year -- have the ability to abandon the card. At worst, the consumer will owe a debt to the card issuer and be subject to collections or negative credit reporting.

Prepaid consumers, however, will likely not be able to end their relationship with a prepaid issuer and walk away from a high-cost card that is draining their very limited funds. Many prepaid cardholders rely on their prepaid cards as their only transaction account. Others have no meaningful choice because the prepaid card is a payroll card that they are compelled to have or have limited choices in avoiding. Indeed, the most abusive overdraft fee programs are on payroll cards, when an overdraft as little as \$5.01 can cost \$25 and up to \$125 per month in wages can be consumed by overdraft fees. Consumers who are tied to their prepaid or payroll cards cannot walk just away. They may feel forced to continue paying excessive fees, even when the fees are unaffordable and prevent them from paying for other critical expenses, because they need to keep their prepaid cards.

¹⁸⁴ There is precedent for the CFPB to use its UDAAP authority to issues limit on fees charged to a credit line. The first version of the fee-harvester cap, which limited fees to 50% of the credit line, was promulgated by the Federal Reserve Board pursuant to its authority under the Federal Trade Commission Act to prohibit unfair and deceptive acts and practices. See 73 Fed. Reg. 28904, 28923 (May 19, 2008) and 74 Fed. Reg. 5498, 5538 (January 29, 2009).

In addition, unlike traditional fee harvester credit cards, fee harvester credit features on prepaid cards are likely to be repaid through automatic payments from the prepaid card. While the proposed rules prohibit creditors from requiring preauthorized electronic repayments or mandatory offset, creditors are likely to achieve extremely high opt-in rates through incentives and other, potentially deceptive or coercive, measures.¹⁸⁵ On a traditional credit card, the consumer will look at the statement each month before taking action to decide when or even whether pay it. On a prepaid card credit feature, the payment may happen automatically from the prepaid card. This makes it more likely that the consumer will be tied to the prepaid card, stuck in a cycle of debt dependent on the next extension of credit. A consumer who is not paying credit manually is also less likely to see the statement and know what is happening.

The CFPB should also be cognizant of the fact that consumers may not even see the notices about fees increasing the second year. While the proposed rules require written Regulation Z statements unless the consumer has consented to electronic statements, some lenders require consent as a condition of credit.¹⁸⁶ But the mere fact that a consumer can provide an email address does not mean that the consumer can be effectively reached that way.¹⁸⁷

2. Apply the 25% cap to pre-account opening fees.

We urge the CFPB to include fees that the consumer is required to pay before account opening in the 25% annual cap of the fee-harvester rule. These fees are abusive in and of themselves, and creditors could open and close accounts to charge them multiple times.

As the CFPB knows, the Federal Reserve Board (FRB) did promulgate a provision that included pre-account opening fees in the 25% cap. But the Bureau withdrew this provision in response to an adverse court decision.¹⁸⁸ While we urge the Bureau to re-visit this issue for all fee harvester cards, it is especially important that this loophole be not used to permit abusive credit features on prepaid cards.

The CFPB has broader authority than the FRB did when it promulgated the rule on pre-account opening fees. As the Bureau itself notes,¹⁸⁹ section 1100A(4) of the Dodd-Frank Act added the words “additional requirements” to the authority in Section 105(a) of TILA. That is, the revised text reads:

The Bureau shall prescribe regulations to carry out the purposes of this subchapter. Except with respect to the provisions of section 1639 that apply to a mortgage referred to in section 1602(aa), such regulations may contain such *additional requirements*, classifications, differentiations, or other provisions,...¹⁹⁰

¹⁸⁵ See Sections XIII.A.1, XIII.B.6. For example, some payday lenders delay availability of credit if consumers do not agree to automatic repayment.

¹⁸⁶ For example, NetSpend requires consent to electronic communications as a condition of overdraft protection.

See

[https://www.netspend.com/account/terms/HEB%20Premier%20GPR%20Visa%20Bofl-ODP-Eng-11AUG14 HTG.pdf](https://www.netspend.com/account/terms/HEB%20Premier%20GPR%20Visa%20Bofl-ODP-Eng-11AUG14%20HTG.pdf). Mobiloans does the same as a condition of its loan s. See <https://www.mobiloans.com/terms-and-conditions>.

¹⁸⁷ This issue is discussed in Sections VII.C, VII.E and XIII.B.4.

¹⁸⁸ First Premier Bank v. Consumer Fin. Prot. Bur., 819 F. Supp. 2d 906 (D. S.D. 2011).

¹⁸⁹ 79 Fed. Reg. at 77125.

¹⁹⁰ 15 U.S.C. § 1604(a) (emphasis added).

This is authority that the FRB never had, and it should entitle the CFPB to even greater deference than the FRB in issuing TILA regulations that establish new mandates on creditors. The CFPB should re-promulgate the provision applying the 25% cap to pre-account opening fees using this greater TILA authority to establish “additional requirements.”

At a minimum, the CFPB should prohibit pre-account opening fees for fee harvester credit features on prepaid cards.¹⁹¹ As described above, prepaid cardholders are especially vulnerable to offers of abusive credit features. Prepaid card issuers who offer fee harvester credit features also have an easier way of obtaining that pre-account opening fee than do traditional fee harvester cards that are not tied to a deposit account. The pre-account opening fee makes it especially difficult for consumers to understand the full cost and amount of net credit they are being offered. These fees should be included in the 25% cap.

In addition, prepaid cards are also susceptible to abuses by pre-account opening fees because the credit line may be closed and re-opened even if the prepaid card remains open. For example, tax time prepaid cards may close credit lines at the end of the tax season and re-open them the following year if the consumer wants another advance.¹⁹² This type of evasion could be used not only on tax-time credit lines but on any type of credit line that a consumer uses only sporadically. Including all pre-account opening fees in the fee harvester cap would prevent this evasion.

3. Require the special fee-harvester available credit line disclosures to be included in application/solicitation disclosures for prepaid card credit cards.

The CFPB has asked whether additional rules are needed with respect to the fee-harvester protections, and has specifically inquired whether to mandate disclosure of the initial credit line. We believe a disclosure of the initial credit line is needed, in the form of the special disclosure for fee-harvester credit cards required by Regulation Z at §§ 1026.60(b)(14) and 1026.6(b)(2)(xiii).

As the CFPB knows, Regulation Z requires both the applications/solicitations disclosures and the account-opening disclosures to contain a special disclosure when fees for the issuance or availability of credit or any security deposit charged to the account exceed 15% of the credit limit. This special disclosure informs consumers of the amount of available credit remaining after these fees or security deposits are debited to the account, based upon either the minimum credit limit in the case of the application/solicitation disclosures or the actual credit limit in the case of the account-opening disclosures.

The critical issue is that this special fee-harvester available credit line disclosure is not required for applications/solicitations disclosures for *charge cards*. As discussed in Section XIII.b.3 below, many prepaid card credit cards may not carry a periodic rate and will be considered charge cards. Under Reg. Z §1026.60(b), there are several disclosures that are not required for charge cards, including the fee-

¹⁹¹ If the CFPB includes pre-account opening fees in the 25% cap only for credit associated with prepaid cards, we urge the Bureau to note in the Supplementary Information that the limitation to prepaid cards has no impact on whether the Bureau has the authority to include pre-account opening fees for all credit cards in the future under its TILA authority as expanded under Dodd-Frank.

¹⁹² The terms and conditions of the H&R Block Emerald Advance line of credit that may be added to the H&R Block Emerald Prepaid MasterCard appear to indicate that the credit line will be closed after April 1, 2015 if the cardholder does not qualify under one of the secured methods or possibly an unsecured method available to some cardholders. See https://www.hrblock.com/bank/pdfs/emerald_advance_terms_and_conditions.pdf.

harvester available credit line disclosure. Thus, the CFPB should require this disclosure to be made specifically for prepaid cards that are associated with fee harvester credit features.

4. Load fees should also be included within the cap.

Proposed Comment 52(a)(2)-2.ii specifies that transfer fees are among the fees that are counted in determining whether fees exceed the 25% fee harvester cap. In addition, the CFPB should clarify that “load” fees are included, even if they are charged to the prepaid account. A transfer fee and a load fee are essentially the same thing. A creditor should not be allowed to evade the fee harvester rule by charging the fees to the prepaid card.

D. Credit should not be accessed through overdrafts. Consumers should affirmatively choose when to use credit.

The proposed rules will improve credit that is accessed through an overdraft transaction. Acknowledging that overdrafts are credit, and applying credit card rules, will result in more affordable forms of credit.

But it would promote the conscious, sparing and safe use of credit to prohibit access through overdrafts altogether. Overdraft protection is unnecessary on a prepaid card. Overdraft “protection” is triggered under one of two conditions: 1) Either the consumer knows that the card has insufficient funds, or 2) she does not. If she knows the card’s balance, she can actively transfer funds from the credit line before initiating the transaction. If she does not, after the transaction is denied, she can decide whether to skip the purchase, pay in cash, or transfer credit to the prepaid account.

Overdraft protection is also unnecessary outside of the retail setting. Consumers can pay bills using the prepaid card’s bill payment function or by using the prepaid card number on the merchant’s website. In either situation, good funds are confirmed before the payment is made. If a consumer wants to access credit in order to pay a bill, she can pay directly with a credit product or transfer funds from a line of credit to the prepaid card. Paying bills through the prepaid card’s website using “credit push” – where the consumer actively makes the payment from her prepaid card account – is safer than giving a third party preauthorization for an ACH debit at some future time, when it could overdraft. As the Federal Reserve Board recently noted:

[D]ebit-pull payments ... expand[] possibilities for unauthorized parties who have access to a payer’s account information to fraudulently pull funds out of the payer’s account. Credit-push payments have become the norm when making electronic person-to-person, business-to-business and certain bill payments.¹⁹³

Internet payday lenders, in particular, have been notorious for using preauthorizations to take control of consumers’ bank accounts.¹⁹⁴ Cards without overdraft protection also typically lack the debit-pull capacity that payday lenders exploit.

¹⁹³ Federal Reserve System, “Strategies for Improving the U.S. Payment System,” Appendix 8 at 49 (Jan. 26, 2015), <https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf>.

¹⁹⁴ See, e.g., Jessica Silver-Greenberg, “Major Banks Aid in Payday Loans Banned by States,” N.Y. Times (Feb. 23, 2013), http://www.nytimes.com/2013/02/24/business/major-banks-aid-in-payday-loans-banned-by-states.html?_r=0.

In short, there is no need for overdraft protection on prepaid cards. Prohibiting false overdraft “protection” on prepaid cards will better protect consumers, give them more control, and promote the conscious use of credit.

E. The exclusion of prepaid cards that offer credit but without a fee or finance charge will lead to evasions.

The CFPB has proposed excluding prepaid cards that access credit from the definition of “credit card” and their issuers from the definition of “creditor” if the issuer does not impose a finance charge or charge excluded under § 1026.4(c). While we are not concerned about a *de minimis* \$10 buffer, we are concerned that larger “free” overdraft features and credit lines could be added to expensive prepaid cards and escape protections.

For example, a prepaid card issuer could offer a “deluxe” prepaid card that comes with \$100 in “free” overdraft protection. The card could have a \$20 monthly fee, compared to the \$5 monthly fee for the non-deluxe cards. Under proposed Comment 1026.4(b)(2)-1.iv, the monthly fee would not be a finance charge. Or, the card could have a low monthly fee but charge virtually every consumer \$15 in purportedly “voluntary” credit insurance – a fee that also is not a finance charge and does not even need to be disclosed under the CFPB proposal.

Thus, the card would not be a credit card and would not receive any of the proposed protections, including the 30-day waiting period. Because the fee was not assessed directly as a result of insufficient funds, the overdraft service also would not be covered by the opt-in rules of Regulation E.

Thus, we urge the CFPB to cover all prepaid cards that access credit as “charge cards,” whether or not there is a finance charge or fee under Section 1026.4(c) imposed. We understand the CFPB is concerned about cards that have a *de minimis* amount of credit, such as a \$10 “pad,” for which no fees are charged. We believe the CFPB can exempt those cards by providing an exception for a *de minimis* amount of credit, using \$10 as a safe harbor, if such credit is not promoted or disclosed.

Also, if all prepaid cards that access credit are considered credit cards, there will need to be an exception for truly unpreventable overdrafts. As discussed in Section IV.G, such an exception must be very narrow.

F. The proposed rules appropriately categorize more fees as finance charges but should go farther.

We support the CFPB’s proposal to include a broader range of fees within the definition of “finance charge” in Regulation Z when those fees are charged in connection with credit on prepaid cards. Covering fees as “finance charges” is essential to triggering important disclosures and other protections for cards that function as credit cards. Overdraft fees, participation fees, and other fees have been used to disguise the cost of credit and evade application of credit laws.

Proposed § 1026.4(b)(2)(ii) and proposed comment 4(b)(2)-1.ii through .iv. would treat charges imposed in connection with credit on prepaid cards as finance charges regardless whether similar charges were imposed in “comparable cash transactions.” The “comparable cash transactions” exception to the

finance charge definition has been completely abused in the checking account context. Overdraft fees are the cost of credit.

Similarly, transfer fees have also been used to disguise the cost of credit and are appropriately characterized as finance charges. The CheckSmart Insight card that was being used to evade Arizona's usury cap, discussed in Section II.C, did so through a "transfer fee" that cost \$14 for a \$100 two-week loan. Transfer fees on bank account overdraft lines of credit, which used to be nonexistent, are also rising and becoming another form of evasion. We have seen transfer fees as high as \$12.50 or even \$20 per day, even on small transfers from an overdraft line of credit. The "comparable cash transaction" exception could permit overdraft transfer fees on prepaid cards if the card had a linked savings account that could, in theory, be used to cover overdrafts but in practice is likely to be empty or insufficient. Transfer fees are another form of overdraft fee and can lead the APR disclosed for an overdraft line of credit to be deceptively low.

Participation fees have also been used to disguise the cost of credit. As discussed above, Advance America previously attempted to evade Pennsylvania's 6% usury cap by making payday loans with a \$150 monthly participation fee. The credit union services organization e-Access Loan formerly used \$30 to \$105 participation fees on top of a purported 18% APR on 30 day loan to enable loans with true APRs ranging from 138% to 378%.¹⁹⁵ Including participation fees in the definition of "finance charge" will prevent these evasions.

However, the proposal does not include application, late, over-the-limit, or returned payment fees in that definition.¹⁹⁶ Application fees for credit features should be considered finance charges. The CFPB should either include late, over-the-limit and returned payment fees as well or make clear that they cannot be charged on prepaid cards.

Application fees have been – and still are being – used in a similar fashion to participation fees to disguise the cost of credit. Kinecta Federal Credit Union uses application fees to make 223% payday loans at its Nix Check Cashing Stores despite the 18% usury cap for federal credit unions. Kinecta discloses a 15% APR but it adds a \$31.95 "application fee" on each two-week loan.¹⁹⁷ The Nevada Federal Credit Union previously offered a 200% to 600% payday loans that charged no interest and disclosed a 0% APR but charged a \$40 to \$50 "application fee."¹⁹⁸ Before the OCC's guidance on deposit advance products, Guaranty Bank made deposit advance loans that had no finance charge at all, only a \$30 "application" fee.¹⁹⁹ These and other abuses with application fees led the Department of Defense

¹⁹⁵ See Letter from Lauren K. Saunders, NCLC to Michael E. Fryzel, Chairman, National Credit Union Administration at 3-4 (Jan. 27, 2009) ("Saunders 2009 NCUA Letter"), http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/letter-ncua-payday-0109.pdf.

¹⁹⁶ Those fees are excluded by current Reg. Z § 1026.4(c)(1) and (2).

¹⁹⁷ See <http://nixlending.com/en/personal-loans/detail/payday-cash-advance>.

¹⁹⁸ See Saunders 2009 NCUA Letter, *supra*, at 3. It is our understanding that the loans were discontinued after the National Credit Union Administration objected in light of the fact that the application fee varied based on the size of the loan and therefore it was a finance charge. But others, like Kinecta Federal Credit Union, have been smarter and have not had variable application fees.

¹⁹⁹ See NCLC, "300% Bank Payday Loans Spreading" (Aug. 2011), http://www.nclc.org/images/pdf/banking_and_payment_systems/ib_bank_payday_spreading.pdf.

to propose including application fees in the military annual percentage rate (MAPR) that is subject to the 36% rate cap of the Military Lending Act.²⁰⁰

One could imagine a prepaid card that offers “free” courtesy overdrafts but charges an application fee to be eligible. The fee would be similar to a first year participation fee. While application fees must be charged to all applicants whether or not credit is granted, payday lenders like Kinecta deny few if any applicants and can make their criteria clear to consumers before taking the “application.”

A prepaid card could offer free overdrafts but charge a “late fee” if the overdraft is not repaid within 24 hours – an identical program to today’s overdraft programs. Hopefully, the CFPB would view such a fee as an overdraft or negative balance fee that is a finance charge, not a late fee that is not. But to avoid any doubt, late fees should be included as finance charges. There is no reason for a late fee on a prepaid card that does not have credit that can be repaid “late.” Similarly, a prepaid card could limit overdrafts to \$10 and impose an “over-the-limit” fee if the card overdrafts more than \$10. Again, that fee should be seen as an overdraft fee, but once more, clarity is important to prevent ingenious evasions. Legitimate prepaid cards without credit do not need a fee for exceeding a credit limit.

Including all these fees as finance charges would cause the prepaid card to be a credit card. In that case, the ability-to-pay, reasonable time to pay, finance charge disclosures and other rules would apply. Creditors should not escape compliance with credit laws by disguising the cost of credit.

G. Negative balances are credit. Be wary of fees for “inadvertent” overdrafts.

We support the proposal to treat all negative balances as credit extensions. Some prepaid cards, like the CheckSmart Insight card described earlier in these comment, have charged “negative balance fees” that were payday loan fees in all but name.

We understand that some financial institutions that do not offer overdraft services have expressed concern about unintended consequences for unpreventable overdrafts that trigger fees. We are aware that, even if a financial institution attempts to prevent overdrafts, there are some situations such as restaurant bills and some foreign transactions that are authorized with apparently good funds but settle at a time or manner that causes an overdraft. The apparent concern is that if a fee, such as a foreign currency fee, is connected to the transaction, then the fee would be treated as a finance charge and the rules governing credit cards would apply to the prepaid card.

It is our understanding that such overdrafts are extremely rare – a fraction of a percent of the many millions of prepaid and debit card transactions. Issuers are also becoming better at setting up systems to deal with pay-at-the-pump and other situations that previously caused occasional unpreventable overdrafts.

Most of these transactions would also not be associated with a fee. For example, point-of-service fees are becoming increasingly rare on prepaid cards.²⁰¹ Any associated fees could simply be waived, as the Bureau points out. The rules pose no problem for unpreventable overdrafts that do not trigger a fee.

²⁰⁰ Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, RIN 0790-AJ10, 79 Fed. Reg. 58601 (Sept. 29, 2014).

If the Bureau does consider any exception for fees occurred in connection with unpreventable overdrafts, it must be tightly limited. The overdrafts must be more than “inadvertent.” The term “inadvertent” is part of the Regulation Z exception for overdraft fees on debit cards today, and those overdrafts are anything but inadvertent.²⁰² The exception has completely swallowed the rule. Given how rare it is that a prepaid card overdrafts in a truly unpreventable situation *and* a fee is charged, any rule exempting those fees from the definition of “finance charge” should apply only in extremely narrow situations. The issuer must prevent overdrafts to the extent possible. Overdrafts cannot be considered unpreventable unless they result from a force-pay situation under network rules and the issuer’s overdrafts are below some extremely low numerical threshold.

Critically, declined transaction and other penalty fees should not be permitted on any prepaid card that overdrafts, inadvertently or not. If the CFPB decides to permit certain fees charged in connection with unpreventable overdrafts, cards should not be eligible if they carry any declined transaction, penalty, negative balance, shortage or overdraft fees of any type.²⁰³ The proposed rules correctly deem negative balances to be a form of credit and fees associated with credit to be finance charges. Sorting out when those fees were caused by an unpreventable overdraft and when, for example, a declined transaction fee could be charged would be messy. Cards that charged such fees should be ineligible for any unpreventable overdraft exemption. If the CFPB considers any exemption, it should be limited to truly customary, nonpenalty fees²⁰⁴ for a noncredit transaction in which there are sufficient funds, such as ATM fees.

In short, we believe that the cleanest solution is the one the Bureau proposed: simply waive the fee. But if the Bureau decides to make any exceptions, they must be limited to issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts or negative balances.

H. Credit on cards not covered by Regulation E should be covered by Regulation Z.

As the CFPB points out, there are a number of types of prepaid cards that are not covered in the proposed definition of “prepaid card” and thus are not covered by Regulation E or are only covered by the gift card rules. These cards include gift cards, rebate cards, and prepaid cards used for needs-tested benefits, health savings accounts and flexible spending programs. While those types of cards would rarely if ever have a credit or overdraft feature, we urge the CFPB to include them in the Regulation Z definition of “credit card” if they do.

Payday lenders have been known to use gift cards to evade payday loan laws. Cash1, LLC disguised small-dollar consumer loans to Washington State²⁰⁵ and Arizona²⁰⁶ consumers as “retail installment sales

²⁰¹ Pew Charitable Trusts found that 10 of the 66 cards it surveyed had point-of-service fees. Pew 2014 Prepaid Card Report, *supra*, at 11.

²⁰² The Commentary states that the following is not a credit card: “A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.” Official Interpretations of Reg. Z § 1026.2(a)(15)-2.ii.A.

²⁰³ Various types of declined transaction and other penalty fees are discussed in Sections IV.J and IV.K above.

²⁰⁴ *Id.*

²⁰⁵ See Complaint, Spring v. Cash1, LLC, (King. Co., WA Sup. Ct. Jan. 27, 2011), on file at NCLC.

transactions" involving the sale of gift cards issued by large retailers such as Walmart, Target, Fry's, and others on a credit basis, charging consumers interest with a typical APR of 360 percent. The Arizona Attorney General obtained a consent judgment the company.²⁰⁷ It would also be simple enough for a payday lender to label network-branded, reloadable prepaid cards as gift cards – or mention them in a single marketing message as a possible gift – and use them as vehicles for delivering credit.

Similarly, companies have proposed in the past to add credit features to health savings and flexible spending cards. Credit cards marketed for medical expenses with deceptive and abusive retroactive deferred interest features continue to be a problem even after the Credit CARD Act.²⁰⁸ Workplace loans are a growing business, often made through payroll. It is not hard to imagine program managers that are already in the card business also issuing flexible or health spending cards and linking their loans to those types of cards.

A traditional gift card, rebate card, or card used for needs-tested benefits, health savings accounts or flexible spending should never have a credit feature. If it does, consumers would benefit from the protections proposed for prepaid cards – and the additional protections we have urged – if credit features were added to those cards. Credit should always be based on ability to pay, be priced in a transparent fashion, provide consumers a reasonable time to repay, and not endanger prepaid funds needed for necessities.

I. Waiting period before adding credit features

1. A waiting period is important.

We support the CFPB's proposal to require a waiting period before credit that can be deposited to a prepaid card is offered to a prepaid cardholder.²⁰⁹ We agree that the period should begin once the prepaid card is registered.

Separating the decision to obtain a prepaid card from the decision to take on credit has several benefits. The consumer will have time to use the prepaid card and become accustomed to its features and costs. Many prepaid cards have financial management tools that help consumers to manage their finances, monitoring their balances, and budget so that credit is necessary. The consumer can discard the card if it does not work to her liking without worrying about and credit that remains unpaid.

It would also support more informed use of credit if the consumer is not pressured into accepting a credit feature at the time of sign-up for a prepaid card. The consumer can take her time to compare credit options if she wants them. And consumers would not need to add another set of decisions and considerations at the same time as they are learning about or deciding among prepaid cards.

We support the Bureau's proposal to require both the prepaid card issuer and the creditor, if they are different parties, to comply with the waiting period.²¹⁰ An alternative approach would invite evasions.

²⁰⁶ "Judgement entered in gift card scheme," KPHO (Apr. 19, 2013), <http://www.kpho.com/story/17353850/judg>.

²⁰⁷ *Id.*

²⁰⁸ See CFPB, Press Release, "CFPB Orders GE CareCredit to Refund \$34.1 Million for Deceptive Health-Care Credit Card Enrollment" (Dec. 10, 2013), <http://www.consumerfinance.gov/newsroom/cfpb-orders-ge-carecredit-to-refund-34-1-million-for-deceptive-health-care-credit-card-enrollment/>.

²⁰⁹ See Proposed Reg. E § 1005.18(g).

We agree with the CFPB's suggestion that card issuers should adopt policies and procedures reasonably designed to ensure that its affiliates, service providers, or commercial entities with whom the card issuer has a contractual relationship do not make a solicitation or provide an application to the consumer during the waiting period.²¹¹ Such a requirement is particularly important for prepaid cards that are sold in payday loan stores. While the prepaid card issuer and payday lender may be different parties, they should not be allowed to plead ignorance when their products are linked.

2. The waiting period should be 90 days.

While we support a waiting period, 30 days is too short. The consumer will only have gone through one monthly cycle and will not have time to explore all the card's features. More time will help the consumer see whether she can manage her finances without resorting to credit at the end of the month.

A 90 day waiting period would also help creditors to determine whether the consumer has the ability to repay credit. The transaction history from at least three monthly cycles will provide valuable information about whether the consumer has the capacity to make credit payments as they are due on top of other expenses. One month is simply not enough. The transaction history is especially important as the credit scores of many prepaid cardholders are quite low, and further evidence that the consumer has the ability to handle credit payments without re-borrowing should be required.

J. All declined transaction fees should be banned.

We support the proposal to prohibit declined transaction fees on transactions that would have accessed a credit feature. That rule is consistent with the rule for credit cards, which prohibits issuers from imposing penalty fees for behavior that is not associated with a dollar amount.²¹² However, the rules should go farther and ban all declined transaction fees.

The proposed rule permits a declined transaction fee if the transaction would only have accessed the prepaid card account and not a credit feature. This sets up a confusing rule, because it could be difficult to say what side of the coin the transaction would have accessed – prepaid or credit – when it did not access either. Presumably, if a prepaid card has an overdraft feature, and both the prepaid card account and the credit account are exhausted, it is the credit side that would have been accessed and no declined transaction fee may be charged. Indeed, if the card has an overdraft feature, it is hard to imagine a situation when the transaction would be declined while the prepaid card still has funds. It could happen if the issuer freezes the account following a data breach or suspicious transactions. But the consumer certainly should not be punished with fees in that situation when it is the issuer that has caused the declined transaction. The CFPB should simply ban all declined transaction fees if a card has an overdraft feature.

But the rule needs to go farther. It is unclear how the rule works if the prepaid card has no overdraft feature but does have a line of credit that may be transferred to the prepaid card. Does the CFPB intend

²¹⁰ 79 Fed. Reg. at 77188. However, if the Bureau accepts our suggestion that a broader range of credit accounts should be covered under the proposed rules, in some narrow circumstances it might be appropriate to relieve the prepaid card issuer of liability for violating the waiting period if the prepaid card issuer has no knowledge of or control over the linking of a credit account and a prepaid card.

²¹¹ 79 Fed. Reg. at 77243.

²¹² Reg. Z, 12 C.F.R. § 1026.52(2)(i)(B).

to permit declined transaction fees if the consumer attempts to use the prepaid card when it has insufficient funds – because the consumer would not be accessing the credit line – but to prohibit the fees if the consumer attempts to access the credit account by transferring funds? While we support the ban on declined transaction fees in the latter situation, it is inappropriate to permit them in the former.

Permitting declined transaction fees if a consumer refrains from using a credit feature to cover a declined transaction gives prepaid card issuers an incentive to impose punitive fees designed to drive the consumer to use credit. Some prepaid cards, especially those sold by payday lenders, impose quite large declined transaction fees. The U.S. Money Prepaid MasterCard, sold by Check Into Cash, has a \$14.95 ACH decline fee.²¹³ In fact, that card charges the fee even if the ACH is declined as *unauthorized* – i.e., if the consumer did not authorize the transaction!

Prohibiting all declined transaction fees if a prepaid card has a linked credit feature is analogous to the rule governing over-limit fees on credit cards. Regulation Z provides that a credit card issuer cannot impose declined transaction fees if the consumer does not opt in to over limit transactions. To do so would permit issuers to coerce consumers into opting in, since they face the Catch-22 of a declined transaction fee or an over-limit fee. The same is true of consumers who have the choice of a declined transaction fee or a credit-related fee. Issuers should not use punitive fees to encourage consumers to use credit features.

But even if the prepaid card does not otherwise have an overdraft or credit feature, declined transaction fees should be prohibited to make the rules more clear, simplify compliance and protect consumers. Many of these fees would be prohibited in any event if the fee would take the account negative. The rules correctly deem a negative balance to be an extension of credit and prohibit decline fees that take an account negative just as on other credit cards. A declined transaction fee is also similar to a negative balance fee even if the fee itself does not result in a negative balance. The consumer is being punished for not having sufficient funds in the account.

Consumers who use prepaid cards often live paycheck to paycheck and spend their funds down to the wire. They may need to access their pay or benefits the moment they hit the card. Indeed, we understand that one of the busiest times at Wal-Mart is at midnight when direct deposits post. But funds do not always post the moment expected. Consumers might attempt to use a card without realizing that their direct deposit is not yet available. Checking the balance is not always easy. Not all consumers have cell phones, and they need to enter long strings of numbers to access an automated system. Checking the balance at the ATMs may incur a fee (but should not), and there is no way to do a balance inquiry at a point-of-service location.

Declined transactions also cost issuers little or nothing. The Federal Reserve Board noted that denied transaction fees “could raise significant fairness issues under the [Federal Trade Commission] Act, because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction.”²¹⁴ Fees for declined transactions are not necessary to make a card program work; they are unheard of on bank accounts. To the extent that ATM owners charge declined transaction fees to card issuers, the cost could be bundled into the cost of ATM withdrawals, or contracts with ATM operators could be renegotiated.

²¹³ See <http://usmoneycard.com/fees.html>, attached as Exhibit 9.

²¹⁴ 74 Fed. Reg. 59,033, 59,041 (Nov. 17, 2009).

It would simplify fee schedules, make compliance easier, and protect consumers to have a clear and simple rule banning declined transaction fees. At a minimum, the CFPB should prohibit all declined transaction fees on prepaid cards that are credit cards and limit other cards to the amount needed to cover any cost to the card issuer of the decline. Otherwise, unfair practices will develop.

K. Other penalty fees.

The CFPB should clarify that at least two other types of fees are penalty fees and are prohibited under Regulation Z²¹⁵ because no dollar amount is associated with the violation: fees for stopping preauthorized transfers and legal process fees. Moreover, because those transactions would be designed to prevent or result in a negative balance, which is an extension of credit, and to prevent unfair practices, those fees should be prohibited on any prepaid card that can have a negative balance.

Most prepaid cards do not permit preauthorized ACH debits. Those transactions are typically allowed only on payday lender prepaid cards, which use the ACH debits to repay payday loans.²¹⁶ Several payday lender prepaid cards charge \$10 fees for stopping payment of a preauthorized ACH transaction.²¹⁷ The fees inhibit consumers from exercising their legal right to stop payment.²¹⁸ Consumers may have no choice but to stop payment of purportedly preauthorized payments, because payday lenders often refuse to honor the consumer's revocation of authorization or the payment may not have been legal or authorized in the first place.²¹⁹ Prepaid cards that are designed to enable payday loans, in particular, cannot complain when those loans cause problems for the prepaid card. Other cards have no need for stop payment orders.

Stop payment fees should be prohibited on prepaid cards that are credit cards as penalty fees that are not associated with a dollar amount.²²⁰ While stopping a payment arguably does not violate a term of the account, neither does initiating a transaction that the issuer declines, being inactive, or closing an account.²²¹ Fees for all of those activities are considered penalty fees. Those activities, like stopping payment, represent behavior that issuers would like to discourage. An issuer cannot limit application of the penalty fee provision of Regulation Z by refraining from calling an unwanted activity a "violation."

For the same reasons, legal process fees should also be considered penalty fees, covered by the ban on fees for violations that are not associated with a dollar amount. Those fees, as well, should be prohibited on all prepaid cards in order to simplify compliance with the Regulation Z penalty fee rule, laws protecting exempt funds, and our suggested rules governing unsolicited cards,²²² and to prevent unfair practices.

²¹⁵ Reg. Z § 1026.52(b)(2)(i)(B).

²¹⁶ See Section II.C, above.

²¹⁷ *Id.*

²¹⁸ Fees that inhibit exercise of legal rights are discussed at greater length below in Section IX.E under Error Resolution.

²¹⁹ See, e.g., Complaint, United States v. Four Oaks Fincorp, Inc. and Four Oaks Bank & Trust, No. 5:14-cv-00014-BO, (E.D. N.C. Jan. 8, 2014), available at <http://www.courthousenews.com/2014/01/09/USvFourOaks.pdf>; http://www.nclc.org/images/pdf/banking_and_payment_systems/regulator_rdfi_issues_letter_9292014.pdf.

²²⁰ Reg. Z § 1026.52(b)(2)(i)(B).

²²¹ *Id.*

²²² See Section VI.I below.

Legal process fees tend to be quite large, \$75 to \$100. They are likely imposed on cards held by consumers who have debts they cannot pay. Consequently, it is hard to imagine that the fees will not cause a negative balance or a subsequent denied transaction when the consumer needs the money for necessities. Thus, the fees would be covered and prohibited by the Regulation Z rule governing penalty fees for violations that are not associated with a dollar amount.

Some cards impose legal process fees even if the funds are legally protected and the garnishment is unsuccessful.²²³ Under Treasury rules, financial institutions may not debit garnishment fees from an account that includes Social Security or other federal benefits unless the account contains funds that exceed the benefits deposited in the prior two months.²²⁴ The rule applies to prepaid cards that accept direct deposit of federal benefits.²²⁵ New York has a similar rule that prohibits garnishment fees from being offset against wages that are protected under state law.²²⁶ Other states may as well.

Legal process fees should also be prohibited to prevent unfair practices. As discussed below, legal process fees appear to be more common on payroll and other cards that consumers do not choose and are less in the public eye.²²⁷ For that reason, we propose that they be prohibited for unsolicited cards. On other cards, the fees are unlikely to be imposed often enough to make the short disclosure form unless the card has few other fees. But even if the fee does show up on the short form, research shows that consumers do not look carefully at fee disclosures. Few will understand a “legal process” fee or anticipate that they will be subject to it. Yet prepaid cards are aimed at consumers with “bad credit” – who may well be subject to legal process – as a “safe” way to “control” their funds and “avoid high bank fees.” Subjecting those consumers to legal process fees is unfair, deceptive and abusive.

Finally, the CFPB should limit the penalty fees that can be imposed (late fee, over-the-limit fee, returned payment fee) to 3% of the delinquent balance, if the creditor requires payment in full of the outstanding balance. Under § 1026.52(b)(1)(ii)(C), this 3% of the balance is the safe harbor for charge cards that require payment of the full balance at the end of the billing cycle. The CFPB should promulgate a special Comment applying this Regulation Z provision to prepaid cards or prepaid credit lines that are charge cards, if they require full payment of the outstanding balance on the first billing statement after a credit extension is made. The Bureau should also make clear that these creditors cannot use the safe harbors under § 1026.52(b)(1)(ii)(A) and (B) (currently \$27 and \$38).

- L. Regulation Z itself should specify when prepaid lines of credit are credit cards, and separate accounts with identified credit limits should be required.

Separate accounts. As the CFPB has discussed, it appears likely that creditors would establish separate credit accounts in order to comply with the proposed rules, rather than having the credit balance be

²²³ For example, the Chase Liquid card as a fee for “Legal Process – Processing of any garnishment, tax levy or other court or administrative order against a Chase Liquid Card, whether or not the funds are actually paid.” https://www.chase.com/content/dam/chasecom/en/debit-reloadable-cards/documents/chase_liquid_v6.pdf (emphasis added).

²²⁴ 31 C.F.R. §§ 212.3, 212.6(h); 76 Fed. Reg. 9939, 9947 (Feb. 23, 2011).

²²⁵ 31 C.F.R. § 212.3; 78 Fed. Reg. 32,099, 32103 (May 29, 2013).

²²⁶ N.Y. Civ. Practice Law & Rules § 5222j.

²²⁷ See Section VI.I below.

reflected as a negative balance on the prepaid account.²²⁸ In fact, the Bureau should require separate credit accounts.

The key purpose of the rules that the CFPB has proposed is to keep credit accounts separate from prepaid accounts. The rules require a separate statement, separate underwriting, separate fee and finance charge disclosures (both pre-acquisition and on the statement), and a separate agreement at a separate point in time. It is hard to imagine how a creditor could comply with these rules without creating a separate account. The Bureau should not let them try. Reflecting credit solely as a negative balance would be confusing to consumers and undercut the message that the consumer is being given and being charged for credit.

Clear credit line. The CFPB asks whether it would be helpful to mandate the disclosure to consumers of the initial credit line that is made available under the terms of the account, including any linked credit accounts.²²⁹ We agree that creditors should be required to tell the consumer what the credit limit is. Consumers should not have to play a game of hit-or-miss to know how much credit they have. Requiring disclosure of the credit limit is possible under the proposed rules because creditors will not be able to use the Regulation E opt-in rules, which encourage secrecy about the credit limit in order to preserve the myth that there is no agreement to extend credit. The fee harvester rule also cannot fully protect consumers unless they know what their credit limit is and can check to see if fees exceed 25% of that limit. For cards where fees exceed 15% of the credit limit, as discussed in Section IV.C.3, creditors must be required to give the special disclosures of the available credit after fees are subtracted.

Identify prepaid card lines of credit as “credit cards” in Regulation Z directly. In addition, Regulation Z itself, and not just the Commentary, should directly state when prepaid card lines of credit (“account number where ...”) are CARD Act credit cards. While the Commentary at Comment 2(a)(15)-2.i. G is clear (except for the cumbersome “account number ...” term), Regulation Z itself only discusses the coverage of prepaid cards as credit cards as an exception to the exclusion of overdraft lines of credit from the special CARD Act definition. One could imagine a creative defense lawyer arguing that since Regulation Z only refers to prepaid cards as credit cards in the context of overdrafts, a line of credit that is accessed by a prepaid card but not in the form of an overdraft is not a credit card. While the logical counter-argument is to point out that the Commentary clearly states these prepaid lines of credit are credit cards, it would not be inconceivable for a judge to accept the defense lawyer’s argument. Furthermore, there have been instances when both courts and lawyers have failed to even cite or read the Commentary. Being specific in Regulation Z itself would avoid any such problems.

V. The CFPB Should Require Funds in Prepaid Accounts to Carry Deposit Insurance and Protection from Insolvency.

Before almost anything else, funds on prepaid cards need to be safe. For the vast majority of prepaid cards, they are. Most cards carry pass-through deposit insurance payable to the consumer, provided by the Federal Deposit Insurance Corp. (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). Deposit insurance should be required for any prepaid card account that is a bank account substitute – reloadable and capable of holding more than \$500 or eligible for direct deposit of wages, benefits or other regular income such as retirement income.

²²⁸ 79 Fed. Reg. at 77217.

²²⁹ 79 Fed. Reg. at 77248.

Deposit insurance protects consumers if the bank or credit union fails. But it does much more than that. When a prepaid card account is designed to be eligible for deposit insurance, consumers receive three separate protections:

- Deposit insurance payable to the consumer if the bank or credit union fails;
- Clarity that the funds belong to the consumer and are protected from the prepaid card company's creditors;
- Examination by bank regulators for compliance with consumer protection rules.

All three are essential for consumer transaction accounts.

The FDIC has clarified that, to be eligible for pass-through insurance, prepaid card funds must be held in a custodial subaccount held for the benefit of the consumer, with records indicating the identity of the consumer who owns the funds. Holding the funds in a custodial account in a depository institution also has the side effect of protecting the funds from the insolvency of the program manager – something that is far more likely than a bank failure. In other words, if the program manager becomes insolvent, creditors will not have any claim on the consumer's funds, and those funds should not become tied up in a bankruptcy proceeding.

Funds protected by deposit insurance also have another important protection: they are, by definition, held in a depository institution that is supervised by bank regulators and/or the CFPB, both for safety and soundness and for compliance with consumer protection rules. Thus, funds in depository accounts have an added layer of safety far greater than protection from insolvency. The accounts will be scrutinized for compliance with the full panoply of Regulation E, UDAAP and other consumer protection issues.

While most prepaid cards funds are held in accounts at depository institutions, not all are. The American Express for Target card is not FDIC insured. The American Express Prepaid Card for Student IDs – which appears to be on the market – was not.²³⁰ The American Express Bluebird Card was not originally. Consumers do not have FDIC insurance on funds held in PayPal accounts – a virtual form of prepaid card – although the PayPal Prepaid MasterCard does carry pass-through deposit insurance.

The funds on the uninsured cards are simply held in a company account that is likely well above FDIC insurance limits and does not provide pass-through protection to consumers. The consumer's "account" is just an entry on company's books, and the funds are not protected in the case of insolvency. Consumers could be unsecured creditors. Wages, public benefits and other critical funds deposited onto the cards could be frozen for months while bankruptcy proceedings progress, and ultimately lost completely. While the funds are protected by state money transmitter laws, those laws do not provide

²³⁰ See NCLC, Comments to CFPB Request for Information Regarding Financial Products Marketed to Students Enrolled in Institutions of Higher Education, Docket No. CFPB–2013–0003 at 8 (Mar. 18, 2013) http://www.nclc.org/images/pdf/banking_and_payment_systems/student-products-cfpb-comments-nclc-18march2013.pdf (citing web page that is now re-directed to another page).

full, robust protection to consumers.²³¹ Nor are the accounts examined by bank regulators in the way they would be if the funds were in FDIC insured accounts.

The Treasury rule that requires pass-through deposit insurance for cards that receive direct deposits of federal payments helps. But it does not apply to cards that are used to receive state public benefits, wages or other critical funds. That rule may have encouraged American Express to add FDIC insurance to the Bluebird card but it has not stopped the company from offering direct deposit of wages and benefits to the uninsured Target card.

Beyond American Express, other large nonbanks like Google, PayPal, Apple, Amazon and Facebook are offering or developing prepaid cards and prepaid payment systems. If these accounts hold significant amounts of funds, they should be required to have deposit insurance. Examination by bank regulators may be especially important for technology companies that are relatively new to financial services and do not have robust consumer protection regimes.

Issuers that hold their funds in accounts not protected by deposit insurance have an unfair competitive edge over other issuers. They do not have to pay the costs of deposit insurance premiums and avoid the scrutiny of bank regulators.

The CFPB has proposed to require prepaid cards to carry a disclosure informing the consumer if the funds are not protected by deposit insurance.²³² But fine print in 7-point font disclosing that the card does not carry deposit insurance on a form primarily designed to attract attention to the **Fees at the Top** is not enough to ensure safety. The focus of the short form disclosure form is fees. The other statements are likely to be overlooked. More importantly, consumers should not be expected to choose whether their funds are safe or not.

It is true that consumers may not understand what protections FDIC insurance provides.²³³ That is exactly why disclosure is not the right answer. Consumers cannot be expected to evaluate the benefits of insurance they do not understand when selecting a card. Even if there was widespread consumer understanding of FDIC insurance, consumers should not be put in the position of weighing whether to accept a lower monthly fee that they definitely will pay or to pay a higher fee and take the very remote risk of insolvency of the card issuer. They should have confidence that their funds are safe without having to figure out if they are or not.

Cards that accept direct deposit of wages and benefits, in particular, are bank account substitutes. The very term “direct deposit” implies that funds are being “deposited” to a “deposit” account. Deposit accounts should carry deposit insurance. However, the American Express for Target prepaid card accepts direct deposit of wages and state benefits but does not provide FDIC insurance. The Target card promotes direct deposit,²³⁴ yet disclaims in the fine print that it is not a “demand deposit or consumer

²³¹ Pew Charitable Trusts, “Imperfect Protection: Using Money Transmitter Laws to Insure Prepaid Cards” (March 2013), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/Pewprepaidmoneytransmitterpdf.pdf.

²³² Proposed § 1005.18(b)(2)(i)(B)(13).

²³³ 79 Fed. Reg. 77166-77167.

²³⁴ <http://www.americanexpress.com/us/content/prepaid/am-erican-express-for-target-card/how-it-works.html>.

asset account.”²³⁵ While American Express appears to be a stable company, even large, reputable companies have failed, and workers’ basic income could be at risk.

Newer technology-based providers like Google, PayPal, Apple, Amazon and Facebook may also be tempted avoid the costs of deposit insurance and the scrutiny of bank regulators. They should not have an unfair advantage over other prepaid providers by being able to hold consumer funds without deposit insurance.

To accept a consumer’s core income and hold it in an account that is not safe is unfair. If either the bank or program manager were to fail, consumers would suffer substantial injury if they lost their funds or were denied access to their income for an extended period of time. The injury is not reasonably avoidable because consumers can do nothing to protect themselves in that situation. It is not reasonable to expect consumers to simply avoid unsafe cards. The typical prepaid card consumer does not understand deposit insurance, reasonably expects that cards that are permitted to be on the market hold funds in a safe manner, and does not expect the issuer to fail. There are no countervailing benefits to competition; competition is undermined by permitting some cards to avoid deposit insurance. Any benefits to consumers are outweighed by the harm.

Holding funds in an account that lacks deposit insurance is also abusive. It takes unreasonable advantage of consumers’ lack of understanding of the material risks and costs. Consumers are unable to protect their interests. Consumers reasonably rely on the prepaid card issuer to hold funds in a safe manner.

It is also deceptive to offer an “account” and to accept “deposits,” including direct deposit of wages, benefits or other income, and not to put those funds in an account with deposit insurance. Prepaid cards also offered as bank account substitutes and it is deceptive to offer an account that mimics a bank account but is not equally safe.

Any reloadable prepaid card that *either* can hold more than \$500 *or* accepts direct deposit of wages, benefits or other regular income should be required to carry deposit insurance. Most prepaid cards do today, and adopting a uniform rule now will prevent evasions in the future. A clear, level playing field is especially important as the payments industry expands beyond depository institutions and other entities that are primarily in the financial services business.

VI. Additional Rules are Needed to Prevent Compulsory Use of Payroll, Government Benefit, Campus and Other Types of Prepaid Cards.

A. Overview

The CFPB has taken several steps to enforce the existing rule in Regulation E that consumers may not be compelled to establish an account at a particular institution as a condition of receipt of wages or government benefits. We appreciate those efforts, including proposed comments and new disclosures.

²³⁵ <http://www.americanexpress.com/us/content/prepaid/american-express-for-target-card/cardmember-agreement.html>.

But stronger rules are needed to implement the existing ban on compulsory use and to ensure that consumers have a true choice. In addition, that ban should be extended to cards used for students, insurance payments, released prisoners, tax payments and any government payment owed to a consumer.

The CFPB has authority to impose strong rules to prevent compulsory use of prepaid cards both under its compulsory use authority and under the EFTA provision restricting unsolicited issuance of prepaid cards.²³⁶ The unsolicited issuance rule applies to a broader range of cards than does the compulsory use provision. That rule also reinforces the requirement for consumer choice.

In order to implement both the compulsory use ban and the conditions on unsolicited issuance, the CFPB should also limit fees. The rules should forbid unsolicited issuance of a prepaid card unless the card offers a genuine method of withdrawing funds without charge and certain fees are limited.

B. Up-front choice, not back-end disenrollment.

We support the CFPB's efforts to make clear to employers and government agencies that they may not require consumers to receive wages or benefits via a prepaid card (including a payroll card). The CFPB made that clear for employers in a Bulletin issued before these proposed rules, and for government agencies in Proposed Comment 10(e)(2)-2 and the discussion of that comment in the Federal Register. However, even more clarity is needed, along with further rules to ensure that consumer choice is real.

First, the rules should be specific that a consumer ***cannot be automatically enrolled in a prepaid card and expected to disenroll*** in order to exercise her choice or avoid receiving funds in a particular account. Some employers²³⁷ and government agencies²³⁸ default consumers into cards without giving them an up-front choice. That practice violates the EFTA ban on requiring a consumer to have an account at a particular institution as a condition of receipt of wages or government benefits. It discourages consumer choice and likely results in the consumer being forced to use the card at least for the initial payments until direct deposit or payment by check can be arranged.

A rule against enrollment by default is consistent with the interpretation of another aspect of the compulsory use ban: the rule prohibiting compulsory payment by electronic fund transfer as a condition of credit. Courts have consistently held that a creditor conditions credit on electronic repayment if the creditor defaults the consumer into that repayment method, even if the consumer has the option to cancel the electronic repayment as soon as the first payment.²³⁹

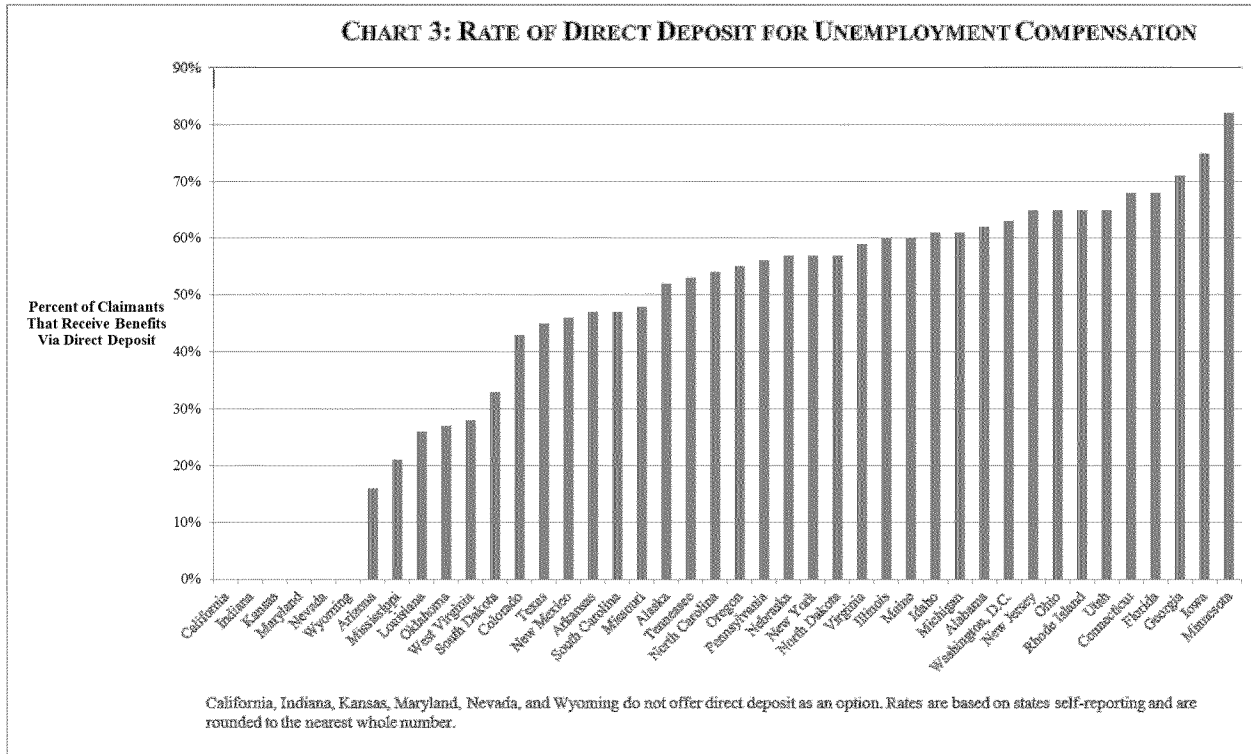
²³⁶ 15 U.S.C. §§ 1693i, 1693k(2); see Section VI.H below.

²³⁷ Sandra Pedicini, "More companies opt to give workers payroll debit cards," Orlando Sentinel (Oct. 6, 2013) ("Orlando Sentinel, Companies Opt Payroll Cards") ("At Darden, which owns chains including Olive Garden and Red Lobster, new employees automatically are set up to receive debit cards, but they can make a phone call or go online to opt out."), <http://www.orlandosentinel.com/business/os-cfb-cover-payroll-cards-20131006,0,1927050.story>. An official with Pacific Sunwear also boasted about default enrollment at an industry conference.

²³⁸ California, Indiana, Kansas, Maryland and Nevada require consumers to receive unemployment benefits on the state's prepaid card. See Lauren Saunders & Jillian McLaughlin, NCLC, "2013 Survey of Unemployment Compensation Prepaid Cards" at 10 (Jan. 2013) ("NCLC Unemployment Prepaid Card Report"), <http://www.nclc.org/images/pdf/pr-reports/report-pre-paid-card-2013.pdf>.

²³⁹ See Fed. Trade Comm'n v. Payday Financial, L.L.C., 2013 WL 5442387 (D.S.D. Sept. 30, 2013) (lender violated compulsory use provision because loan was conditioned on agreement to repay by EFT despite right to cancel EFT

Our survey of state unemployment prepaid cards makes clear that default options matter and can prevent consumers from exercising their choice. In our survey of direct deposit rates for unemployment compensation, we found that the median direct deposit rate was 57% with a high of 82%.²⁴⁰ The state with the lowest direct deposit rate, Arizona at 16%, did not give workers the initial choice of direct deposit.²⁴¹ Workers were automatically enrolled in the prepaid card and had to disenroll to choose direct deposit. Other states with low direct deposit rates also did not offer the initial choice of direct deposit for all unemployment applicants and required extra steps for the worker to choose that option.²⁴²



In light of the confusion that the CFPB notes about the requirements for payroll and government benefits cards, the CFPB should make the rules crystal clear. Just as with a creditor, an employer or government agency conditions receipt of wages or government benefits on use of a prepaid card, in violation of the compulsory use ban, if it defaults the consumer into the card, even if the consumer can disenroll.²⁴³

payments even before first payment); *Pinkett v. First Citizens Bank*, 2010 WL 1910520 (N.D. Ill. May 10, 2010); *O'Donovan v. CashCall, Inc.*, 2009 WL 1833990 (N.D. Cal. June 24, 2009) (finding violation of EFTA despite fact that borrowers could cancel authorization before the first payment); *West Virginia ex rel. McGraw v. CashCall, Inc.*, et al., No. 08-C-1964 (W.V. Cir. Ct. Sept. 10, 2012) (same), www.nclc.org/unreported.

²⁴⁰ NCLC Unemployment Prepaid Card Report, *supra*, at 7.

²⁴¹ *Id.* at 9.

²⁴² *Id.* at 9.

²⁴³ The credit rule is part of the same EFTA provision as the compulsory use ban for wages/government benefits. 15 U.S.C. § 1693k. Both subparts take about a “condition,” *id.* 1693k(1), (2), and the interpretation of what is a “condition” should be the same for both.

Second, the rules should make clear that an employer or government agency must give the consumer **clear notice of her options before** the consumer acquires a card. An investigation by the New York Attorney General found that many employers obscure or discourage choices that employees have under New York and federal law.²⁴⁴

The proposed rules require an employee or government benefits recipient to receive fee disclosures before a card is acquired.²⁴⁵ Proposed comment 18(b)(1)(i)-1 gives an example that makes clear that the employee must be presented the short (and long) form to review before agreeing to receive a payroll card. That much is good.

However, the disclosures do not inform employees about their other pay options or tell them how they can choose another option. The short form disclosure for payroll cards merely includes the notice: “You do not have to accept this payroll card. Ask your employer about other ways to get your wages.” The government benefits short form has a similar statement. The warnings are helpful, but too vague.

Similarly, proposed Regulation E Comment 18(b)(1)(i)-1(ii) gives an illustration of an acceptable process where the consumer somehow “learns that he or she can receive wages via a payroll card account,” receives the fee disclosures, and then “agrees” to accept the card.²⁴⁶ But the comment does not say anything about presenting the consumer’s other options.

The onus should not be on the employee or government benefits recipient to ask about other ways to get their money. They should be told. Choice is meaningless without clear information to exercise it. In our survey of direct deposit rates for unemployment compensation, the state that came out on top, Minnesota, makes it easy for workers to sign up for direct deposit. When workers apply, they are given the clear, up-front choice of direct deposit. Workers can also change their payment method by logging into their account online or by phone. States at the bottom, with low direct deposit rates, forced recipients to figure out how to sign up.²⁴⁷

Employers and government agencies should be required to present clear options to the consumer before card acquisition. A comment should make that requirement clear. A vague notice that is part of a form designed mostly to draw attention to fees is not enough give employees and government benefits recipients a choice.

Third, the consumer must have **sufficient time to review the payroll card disclosures and to exercise her choice** of pay method before being given a card. The CFPB highlighted this issue in discussing the importance of receiving disclosures before an account is acquired:

Further, the Bureau believes that some employees acquiring payroll card accounts may receive information about the accounts in a manner that makes it difficult for an employee to comprehend the accounts’ key fees. For example, employees might receive terms and condition documents regarding payroll card accounts at the same time they receive other benefits-related

²⁴⁴ NY AG Payroll Card Report, *supra*, at 16-18.

²⁴⁵ Proposed Reg. E § 1005.18(b)(1)(i).

²⁴⁶ Proposed Reg. E Comment 18(b)(1)(i)-1.

²⁴⁷ NCLC Unemployment Prepaid Card Report at 9.

paperwork, making the fees difficult for employees to comprehend while sorting through other important and time-sensitive paperwork.²⁴⁸

Yet nothing in the proposal prevents this scenario from occurring. In fact, proposed Regulation E Comment 18(b)(1)(i)-1.ii **seems to endorse it**. The comment discusses a consumer who learns about the payroll card, is given the disclosures, and agrees to receive the card, all apparently at the same time.

Instead, consumers should receive complete information about their pay options and have **30 days to choose** how to receive their pay before they can be sent a payroll card.²⁴⁹ Consumers no longer routinely carry around checks that list their routing and account numbers for direct deposit. They should have a reasonable amount of time to provide that information—or even to open a new account—in order to enable them to receive their funds in the account of their choosing. The employer could encourage an early choice by telling employees to bring their checkbooks or account numbers to their first day of work or when coming in to fill out employment forms if they want direct deposit, or by encouraging them to open bank accounts before starting work. Of course, consumers can be encouraged to make a choice earlier than 30 days and can be provided a payroll card immediately if that is their choice.

The Cleveland Clinic, for example, gives employees **three months** to set up direct deposit before enrolling employees in the payroll card.²⁵⁰ A 30 day waiting period might require the first wage or benefits payment to be made by check. But that is better – and less costly for the prepaid card issuer – than setting up a prepaid card account and issuing a personalized card for a consumer who will opt out after the first deposit.

Finally, while the payroll card bulletin and the Federal Register discussion are clear that the compulsory use rules apply to payroll and government prepaid cards, **the Regulation E commentary itself** should make that crystal clear. Existing Comment 10(e)(2)-1 and Proposed Comment 10(e)(2)-2 should be revised to state that consumers cannot be required to receive funds “by direct deposit to any particular institution, including a payroll [prepaid] card account at a particular institution.”

C. Direct deposit must be one of the choices.

When providing a consumer with the option of how to receive funds, one of the required options must be direct deposit to an account of the consumer’s choosing. While the vast majority of employers and government agencies that use prepaid cards offer the choice of direct deposit, a few do not. According to one article:

Applebee's spokesman Dan Smith said the franchisee who owns Central Florida restaurants does not allow direct deposit.

²⁴⁸ 79 Fed. Reg. at 77151. The Bureau also points out the importance of comparison shopping, even for student or payroll card accounts. 79 Fed. Reg. at 77152. For example, an employee might choose to open a bank account or a different prepaid card account in order to receive direct deposit. But an employee can only comparison shop if given some time.

²⁴⁹ Of course, in some states, the consumers’ affirmative consent is needed. But in others, employers are allowed to enroll the employee in a payroll card without affirmative consent.

²⁵⁰ See <https://portals.clevelandclinic.org/Portals/75/Documents/Payroll%20FAQs%202011.pdf>.

"The default option is the payroll card, but if they'd rather have the check mailed to them, that option is available to them," Smith said.²⁵¹

An employee should not have to wait for her paycheck to arrive in the mail if she does not want the company payroll card. Workers who receive payroll cards often work at restaurants and other retail locations where they receive minimum wage or low hourly wages. They need their pay as soon as possible. The same is true of individuals who receive government benefits. A coerced choice is no choice at all.

Employers are not required to pay electronically. But if they choose to do so, they must allow the employee to choose where to receive the direct deposit. Otherwise, the employee is being required to establish an account with a particular institution in order to receive electronic fund transfers.

D. Mandating a government benefit card with transfers does not comply with the compulsory use ban.

The CFPB requests comments on whether an institution would comply with the Regulation E ban on compulsory use if it provides the first payment to a benefit recipient on a government benefit card and, at that time, provides information on how to divert or otherwise direct future payments to an account of the consumer's choosing. The answer is clearly no, both as a matter of the EFTA rule and as a matter of policy.

The EFTA prohibits requiring a consumer to have an account at a particular institution as a condition of receipt of public benefits.²⁵² In the scenario described above, the consumer is still required to have a prepaid card account at a particular institution. Having a card is a condition of receipt of the first payment. It is also a continuing requirement if the only option is to set up an automatic transfer for future payments, because the consumer must continue to hold the prepaid card account. The consumer still has the obligation to review that account for errors or unauthorized charges—which could happen just as they can on any Visa or MasterCard account. Moreover, a consumer who elects automatic transfers to her own account is penalized from exercising her choice because she must wait longer for her funds due to the slowness of the ACH system.

An opt-out system also stifles consumer choice. Defaults tend to be sticky, and defaulting people into a prepaid card will result in fewer people going to the time and effort to figure out how to get out. The median direct deposit rate for unemployment compensation is 55%. But states that require opt out have far lower rates. Arizona had the lowest direct deposit rate at 16%. Mississippi was second lowest and does not permit enrollment in direct deposit at time of application unless the worker applies online. Similarly, only 24% of California recipients and 21% of Maryland workers – who are also automatically enrolled in the prepaid card – went to the effort to set up automatic transfers to their bank accounts.

Thankfully, the CFPB has not asked whether employers can be allowed to use an opt-out system for employees, and hopefully the Bureau is not considering that possibility. Permitting opt-out in the employment area would be even worse, as neither employers nor payroll cards receive the same public scrutiny as government agencies and government cards. Nor do most employers have the number of potential customers or the bargaining power that state governments have.

²⁵¹ Orlando Sentinel, Companies Opt Payroll Cards, *supra*.

²⁵² 15 U.S.C. § 1693k(2).

The identical legal provision of the EFTA applies to both employers and government agencies. The EFTA does not permit employers to require use of a payroll card, even if automatic transfers are an option. The same rule holds for government agencies.

E. Consumers need information on the right to, and how to, disenroll.

Information about up-front choices is important. But sometimes that information will be obscured by other important matters, or the consumer will not get around to providing her depository account information. When issuing a payroll or government benefits card, the card issuer should be required to give the consumer a reminder of her other options and information on how to disenroll and receive funds another way.

The proposed notice on the short form for payroll and government benefits cards is a good start. But here again, the short form is mostly designed for fee information. A separate sheet of paper should call attention to the options available to the consumer and tell her how to exercise them. For example, the cover letter that comes along with a payroll card could say:

Welcome to your Employer X Payroll Card. Your wages will be deposited to this card each pay period. **If you prefer to receive your wages by direct deposit to another account or by check (if available from your employer), please contact your employer at (800) 111-2222 or go to www.employerX.com/payroll.**

Providing specific information about how to contact the employer is important. Payroll cards are often used at fast food and other retail establishments, and the manager in the store is unlikely to be the one who manages payroll. The employee should not have to hunt for that information. We found in our unemployment prepaid card report that states that hid the ball on how to exercise the choice of direct deposit resulted in fewer consumers choosing their own account.²⁵³ Any letter mailed personally to an employee at a particular employer can easily contain standard language with that employer's human relations department and website.

F. Card issuers must have reasonable policies and procedures to prevent compulsory use.

Card issuers – and not just employers and government agencies – should be required to adopt policies and procedures reasonably designed to ensure compliance with the ban on compulsory use. Involving card issuers more in the process of communicating pay choices is natural given their heavy role in developing and providing materials to employers and government agencies regarding the cards. They are also the ones who are promoting use of and profiting from the cards and should bear some of the responsibility to ensure that the cards are not being forced on people.

More involvement by card issuers will improve compliance and will especially help small businesses that may know little about Regulation E. Employers are responsible to know the law. But it would help the owner of a couple of McDonalds franchises if the payroll card provider reminded the owner about Regulation E requirements and confirmed that direct deposit was being offered before beginning to issue payroll cards for those employees.

²⁵³ NCLC Unemployment Prepaid Card Report, *supra*, at 8-9.

Reasonable procedures should include due diligence before accepting funds to deposit to a card and communications with the consumer when providing the card. Before setting up a new payroll card program – and annually thereafter – the card issuer should confirm that the employer also offers employees the choice of direct deposit and, if required in the state, checks. The card issuer should ask to see the employer’s materials for presenting choices to the employee and require the employer to provide that information along with the disclosures about the payroll card. As discussed above, it should also be the card issuer’s responsibility to provide the notice about disenrollment rights and information along with the card when it is issued.

G. Campus, insurance, released prisoner, tax and other cards should not be compulsory.

While the compulsory use ban is currently limited to wages and public benefits, it should be extended to several other types of cards. Like any prepaid card, these cards can be full of fees that cut into payments that consumers are due. Prepaid cards should not be used as a vehicle for giving consumers money they are owed unless consumers have a choice in the matter. In addition, as discussed in Section VI.I, stricter rules are needed for cards that are issued on an unsolicited basis. Section 1005.10(e)(2) should be amended to read:

No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or as a condition of receipt of:

(A) a government payment,

(B) insurance or workers’ compensation proceeds,

(C) funds owed to a student enrolled in an institution of higher education, or

(D) funds due a consumer upon release from prison or jail.

Student should not be required to use a card to receive funds in connection with higher education. Most students already have or are eligible to open their own bank accounts. There is no need to force them into using a college card just because it likely provides revenue to the college. The abuses of colleges that put revenue sharing ahead of free choice by their students are well documented.²⁵⁴

Campus cards that are used for government-funded financial aid (a public benefit), work study or other employment should already be covered by the Regulation E ban on compulsory use. But some colleges have not gotten the message. For example, the Emmanuel College Prepaid Card “is automatically issued to all students currently enrolled at Emmanuel and is the primary way that any financial aid refunds or work-study payments are delivered to students.”²⁵⁵ Higher One also continues to coerce students into using Higher One accounts to receive financial aid refunds despite last year’s enforcement action.²⁵⁶ While the Higher One accounts purport to be bank accounts and not prepaid cards, the compulsory use provisions of Regulation E govern either type of account.

²⁵⁴ See U.S. PIRG, “The Campus Debit Card Trap” (May 30, 2012), <http://www.uspirg.org/reports/usp/campus-debit-card-trap>.

²⁵⁵ <http://www.ec.edu/about-ec/emmanuel-prepaid-card>.

²⁵⁶ See section X.B below.

Explicitly adding funds in connection with higher education to the compulsory use provision would improve compliance. In addition, it would avoid ambiguities when students are forced to receive funds at a particular institution for purposes other than wages or public benefits, such as financial aid that is not publicly funded. All general-use²⁵⁷ campus cards should be covered regardless of the source of the funding in order to prevent any confusion and make compliance easier.

There have also been abuses by prisons that have forced released prisoners to receive money that is owed them on a prepaid card that is full of fees and difficult to use.²⁵⁸ Those funds may represent wages from a prison job or public benefits that were paid to the prisoner while in prison. Since the money was taken from and is owed back to the releasee, fees take his or her property without due process or just compensation. Releasees should have a choice of how their money is returned to them, and all choices should enable them to full reimbursement without fees.

Consumers who are due insurance payments, tax refunds, and any government payment (other than needs-tested benefits paid on an Electronic Benefit Transaction (EBT) card) should have a choice of how to receive their funds. Consumers who are forced to accept prepaid cards for money owed to them do not have any say in the terms of a prepaid card and have no ability to choose a card that has low fees or is easy to use. As the prison example shows, those cards can come with fees such as high weekly fees that are virtually impossible to avoid.

In fact, a study by the Federal Reserve Bank of Kansas City showed that cards distributed by tax preparers were far more expensive than those distributed by any other outlet. Consumers paid on average \$26.81 per month for tax refund cards, compared to \$11.17 per month on the next highest category of cards, those sold by check cashers.²⁵⁹ Neither tax preparers nor government revenue departments should require consumers to receive a tax refund on a prepaid card.

Notably, for one-time payments, it is actually more costly to produce and issue a prepaid card than it is to issue a paper check. That cost is covered by inactivity and other fees that profit the card issuer but bleed consumers. Payment vehicles should not be designed to skim consumers of money they are owed.

H. Limit fees on payroll, campus and other unsolicited cards

The EFTA generally bans unsolicited issuance of access devices.²⁶⁰ A prepaid card is an access device for a prepaid account. A financial institution may send a consumer an unsolicited prepaid card only if, *inter alia*, the card is not validated; “the consumer may dispose of it if validation is not desired”; and the card is “validated only in response to the consumer's oral or written request for validation.”²⁶¹

But for employees, students, public benefits recipients, prisoners and others, disposing of the card is not any option. Many states allow employers to require electronic pay through either direct deposit or a

²⁵⁷ We are not urging coverage for closed-loop cards that merely pay for laundry or meals on campus.

²⁵⁸ See Prison Policy Initiative, Proposed Amendments to Regulation E (March 2015), <http://www.prisonpolicy.org/releasecards/>.

²⁵⁹ Kansas Fed, Recurrent Overdrafts, *supra*, at Table 5.2, p. 68. However, consumers who overdrafted paid on average \$27.24 per month. *Id.*

²⁶⁰ Reg. E, 12 C.F.R. § 1005.5(a).

²⁶¹ Reg. E, 12 C.F.R. § 1005.5(b)(2), (4).

payroll card. The same is true for government benefits. But direct deposit is not an option for an unbanked consumer, who can therefore be automatically enrolled in a prepaid card without consent. A consumer who does not have another account for direct deposit – or who was not given that choice – has to validate the card in order to receive the funds. Even if the consumer is able to set up direct deposit eventually, she will need to validate and use the card until that can happen. In addition, closing the account itself may cost the consumer a fee as high as \$15.

The CFPB should limit the fees on cards that are provided on an unsolicited basis. Using its authority over compulsory use and unsolicited cards, the rules should permit an issuer to send an unsolicited card only if the card meets minimum requirements and has a truly convenient method to access the funds to the penny without fees. These rules should apply to all general-use payroll, campus, public benefits, release, insurance, workers compensation and other unsolicited cards, but especially to cards that an employee or other consumer may be enrolled in without affirmative consent.

The fee limits must make full access to the consumer's money a reality. While every state requires that payroll cards provide a method for employees to withdraw their wages in full, to the penny, without fees, that rarely turns out to be the reality. The New York Attorney General's survey found that only "25%-30% of workers successfully utilized their payroll cards without any fees."²⁶²

Convenience checks and teller withdrawals, the two methods used to permit a complete cash withdrawal on prepaid cards, are rarely used and are inconvenient.²⁶³ Bank tellers are unfamiliar with the cash withdrawal rules,²⁶⁴ and convenience checks are "cumbersome," "complex" to use, and "inconvenient."²⁶⁵ While cards may offer at least one free ATM withdrawal, surcharge-free ATMs may not be conveniently located. In the New York survey, workers withdrew cash at out-of-network ATMs far more than they did at network ATMs.²⁶⁶ While it is theoretically possible to access wages for free on a payroll card, and the cards do provide conveniences for unbanked workers, it is essential that workers be given clear choices of how to receive their pay.

In addition, junk fees are common on unsolicited cards provided to consumers who have no choice but to accept them. Competition does not work in that situation. High junk fees especially flourish in the secretive payroll card market.²⁶⁷ For example, payroll cards charge fees as high as \$100 for "legal process,"²⁶⁸ a fee not found on any of the more public unemployment compensation prepaid cards used by states.²⁶⁹ Some payroll cards also charge \$15 to \$25/hour for "research."²⁷⁰ These fees are not

²⁶² NY AG Payroll Card Report, *supra*, at 3 n.3.

²⁶³ In the four companies that provide complete information, only 4% to 9% of the workers used teller withdrawals and less than 1% used convenience checks. *Id.* at 8.

²⁶⁴ Visa and MasterCard have both been forced to develop flyers that consumers can take with them to bank tellers to remind them of the network rules. But consumers do not know about those flyers and cannot be expected to carry a stack around with them every time they need cash.

²⁶⁵ NY AG Payroll Card Report, *supra*, at 16, 17, 19.

²⁶⁶ Out-of-network ATM withdrawals amounted to 46% to 67% of cash withdrawals at the four large retailers who supplied information, compared to 25% to 49% for network ATM withdrawals. *Id.* at 8.

²⁶⁷ Payroll card providers have refused to supply us with fee schedules, even for cards issued by state governments.

²⁶⁸ The state employee payroll cards in Arizona, New Hampshire, New Jersey, Texas and Washington all charge \$100 legal process fees. See Exhibits 19, 25, 26, 31, 34. The fee is \$40 in Ohio. See Exhibit 27.

²⁶⁹ See NCLC Unemployment Prepaid Card Report, *supra*.

common on general use prepaid cards marketed to the public. The lack of competition and public scrutiny of unsolicited cards leads to higher fees.

Fees for “legal process” are especially inappropriate on payroll cards (and, indeed, on any prepaid card.) Employees may be unbanked and unable to receive their wages by direct deposit precisely because they have had problems with credit and expenses that exceeded their income. Unbanked employees are likely to have unpaid debts. They can do nothing to prevent legal process against a payroll card other than paying their debts. But their low income and blemished credit are why they have the payroll card in the first place. Moreover, their pay may even be exempt from garnishment.²⁷¹ A payroll card should be a safe place to get their pay, not a place where they can be hit with a \$100 fee.

The CFPB should require that unsolicited cards provide a meaningful ability to withdraw funds in full without fees. Given the difficulty of using convenience checks and teller withdrawals, and to protect consumers from unfair fees, unsolicited cards should come with:

- unlimited free withdrawals at network ATMs;
- no PIN debit fees, which are incurred if a consumer asks for cash back from a purchase;²⁷²
- at least one other method that permits a full, fee-free withdrawal to the penny;
- no legal process or other penalty fees that are not reasonable and proportional to the violation as set forth in Regulation Z;²⁷³
- no fees for research or other fees for complying with the issuer’s legal responsibilities or that inhibit the consumer from exercising legal rights;²⁷⁴
- compliance with the rules governing overdraft and credit features;²⁷⁵
- no inactivity fees,²⁷⁶ and
- no fees to close the account.²⁷⁷

²⁷⁰ The Ohio state employee payroll card charges \$15/hour. See Exhibit 27. South Dakota charges \$25/hour. See Exhibit 30.

²⁷¹ Both federal and state laws exempt a certain amount of wages from being garnished through the employer. Federal law has been interpreted narrowly, with the protection being lost once the funds are transferred to the employee’s bank account. See NCLC, Collection Actions § 12.4.6. The concern may be distinguishing wages from other funds in the employee’s account. But a payroll card contains only wages. Some state laws operate in a similar fashion, but some provide protection even after the wages are deposited into the employee’s account. See *id.* at § 12.6.1.

²⁷² PIN debit fees are becoming increasingly rare. But Higher One charges a \$0.50 fee on PIN transactions on its student cards. See <https://www.higheroneaccount.com/studentaccount/feeschedules.do>.

²⁷³ 15 U.S.C. § 1665d; Reg. Z § 1026.52(b). Legal process and other penalty fees are discussed in Sections IV.K and VI.I above.

²⁷⁴ Fees for research and exercising legal rights are discussed in Section IX.E under Dispute Rights below.

²⁷⁵ Those rules would apply to prepaid accounts in any event, but incorporating them into the unsolicited access device rule could extend them to unsolicited devices that access demand deposit accounts, such as Higher One accounts. That issue is discussed in Sections VI.I and X.B.

²⁷⁶ See Section VIII.A.7.

²⁷⁷ The New York Attorney General has opined that fees to close the account and issue a check for the remaining balance violate the law requiring employees to be able to access their wages in full. See NY AG Payroll Card Report, *supra*, at 6. Account closing fees also prevent consumers from exercising their choice to dispose of an unwanted card, as required under 15 U.S.C. § 1693i(b)(3).

In addition, several of these fees should not be allowed on any prepaid card.²⁷⁸

New rules on unsolicited access devices should apply to all access devices, whether they access a DDA account or a prepaid account. We are unaware of any use of unsolicited DDA access devices other than in the campus card context. As discussed in Section X.B below, those cards have been the source of considerable abuse and are effectively prepaid cards, but are currently outside the proposed rules. A rule limiting fees on all unsolicited access devices would not only impact prepaid cards or prepaid card-like products, but would avoid evasions.

In addition, as discussed in Section X.B below, nonbank “bank accounts” should be subject to the prepaid card rules. There are different ways to accomplish this result, but one would be to require compliance with some or all of the prepaid card rules for any account that is initiated through an unsolicited access device.

VII. Account Information Should be Free and Convenient.

We support the efforts made in the proposed rule to ensure that consumers have free and convenient access to basic account information, including balances and transaction histories. Below we make suggestions to improve access to account information.

A. Balance information

By telephone and online

We appreciate the admonition that consumers must have the ability to check their balances by telephone and online with no fees. We believe that the requirement for free telephone access requires a toll-free number. Some consumers still pay long distance charges on their home phones or their mobile phones, and they should not have to pay those charges simply to check their balance.

While the payroll card rule has long required issuers to provide balance information by telephone, many payroll cards charge fees for customer service calls even if the consumer only uses the automated system (“interactive voice response” or IVR) to find out the balance. Several state government payroll cards charge such fees. For example, the Georgia card offers five free calls per month and charges \$0.35 each time after.²⁷⁹ Indiana allows two free calls per month, one free call per deposit and charges \$0.50 for additional balance inquiries by telephone.²⁸⁰ Ohio has four free calls per month and charges \$0.35 each time after.²⁸¹

Providing balance information is a requirement and issuers should not be allowed to charge for it. Especially for the lower income consumers who use prepaid cards, balance information is essential to

²⁷⁸ See Sections IV.J, IV.K, IX.E below.

²⁷⁹ See Exhibit 20.

²⁸⁰ See Exhibit 21.

²⁸¹ See Exhibit 27.

managing their finances and they need to keep a close eye on it. While the fees are small, they can add up. Payroll card issuers have observed that consumers often check their balances several times a day.²⁸²

ATM balance inquiries

Free access to account balances by telephone and online is important but not enough. Many consumers do not have internet access. Obtaining balance information by telephone can be inconvenient and does not work for everyone. The consumer needs to enter a long string of numbers and navigate an automated menu. Customer service lines are generally unavailable in languages other than English and Spanish. Not everyone has a mobile phone available to check balance information when they need it, before withdrawing cash or making a purchase – risking declined transaction fees. Many consumers have limited minutes available on their phone plans, or their prepaid telephone plans may have run out with no money at the moment to refill it.

We support the proposal to retain the requirement for balance information at a terminal (i.e., an ATM) for government benefit cards and urge the CFPB to expand it to all prepaid cards. The CFPB should add a comment in both the government benefits card section and the general prepaid card section stating that ATM balance inquiries must be free. ATMs are available to everyone, are simple to use, and are easier to navigate for non-English speakers than oral information. Balance information at a terminal should be free, just as it will be by telephone. While some ATM owners may charge prepaid card issuers for balance inquiries, the cost is minimal, likely less than prepaid cards charge. Any cost can be bundled into the cost of an ATM withdrawal, simplifying fee schedules and making it easier for consumers to understand and estimate the cost of cards. Issuers can also offer and steer consumers toward other convenient channels for balance information, such as text messages.

Balances by text and email

The capacity to send text messages has become so ubiquitous at minimal cost that issuers should also be required to offer balance information by text upon request. Once the consumer's mobile number is linked to the account, texting is the fastest and easiest way to obtain the balance for a consumer who has a mobile phone. Text messages are even easier for non-English speakers to use than an ATM. Text messaging also enables checking balances before making a purchase at a location where there is no ATM.

In addition to balances, issuers should offer opt-in automated text, telephone and email messages about low balances and deposits. Those messages will also help consumers manage their accounts and avoid the need for telephone calls to check whether a balance in order to know if a deposit has arrived.

B. Customer service calls

1. Cost

As discussed above, we support the requirement to provide free telephone access to balance information. In order to make sure that this is a reality and that consumers also have free access to other basic information about their accounts, all automated customer service calls should be fee-free.

²⁸² Comment at Payroll Card Salon in New York City sponsored by Center for Financial Services Innovation, Sept. 23, 2015.

Consumers who are not receiving statements need access not only to balances but to their last deposit, recent transactions, and other information.

Indeed, it could be quite confusing to consumers if IVR calls for balance information are free but a fee is charged if the consumer accesses another part of the menu for other information. Issuers may emphasize that calling to obtain balance information is free. The consumer could get caught in a bait and switch if she makes what she believes to be a free call only to be charged for it.

Moreover, consumers should also have reasonable access to free live customer service calls in case they have questions or need to discuss a problem. Not every question or issue can be answered by an automated menu. Plus, automated menus do not work for everyone. Seniors receive Social Security on prepaid cards. Individuals with mental and physical disabilities receive disability benefits on prepaid cards. Prepaid cards are generally not sold through bank branches or other locations that provide access to a human being. Access to live customer service is essential.

Customer service calls should be free. Eliminating customer service fees would free up space on the short form. At a minimum, automated calls should be free and consumers should have at least four free live calls per month, along with free calls to raise a problem or dispute a charge. Eliminating fees for IVR calls and standardizing a minimum number of free live calls would also eliminate significant confusion, as discussed below in the section on the short form.

As discussed above, the customer service line should be a toll-free number. This is especially important for live customer service, as consumers may be put on hold for a considerable period of time. Consumers should not have to pay long distance charges in order to dispute transactions or discuss problems with their accounts.

2. Foreign languages

We urge the CFPB to require foreign language support for live customer service calls in any language that the issuer uses in connection with marketing or acquisition of the card. The New York Attorney General found that none of the payroll card programs surveyed provided telephone services in any languages other than English and Spanish, regardless of the language typically used by the employer to communicate with workers.²⁸³ As with the short and long form disclosures, if a prepaid card issuer seeks customers who speak another language, customer service should be available in that language.

Interpreters must not only be generally fluent in the spoken language but should also have fluency and expertise in the field of prepaid products and features. Deploying generalist interpreters who do not have product expertise can result in inaccurate or incomplete information. If a prepaid card issuer solicits non-English speaking customers, it must provide them with substantially the same level of access to services received by English-speaking individuals.

C. Account histories and statements

Statements or other forms of transaction histories are an essential part of managing an account. They help consumers to check for unauthorized charges and errors, and also to understand the fees they are being charged. Statements provide records of purchases that might be needed if there is a problem,

²⁸³ NY AG Payroll Card Report, *supra*, at 13.

and a history of the individual's financial life that could be part of a rent or mortgage application or a tax return. Statements also help consumers to understand their spending patterns and to budget.

No fees for required information. We support proposed Comment 18(c)-3, which essentially states, without saying so directly, that an issuer may not charge fees for providing electronic access to account information or for requesting paper statements on an ad hoc basis up to once a month. However, this point should be made more directly. A sentence should be added to say: "A financial institution may not charge a fee for providing account information required under § 1005.18(c)(1)."

Online information and ad hoc statements have been requirements of the payroll card rule. Yet many payroll cards charge for such information. State government payroll cards used in Ohio (\$3.00), South Dakota (\$3.00) and Wisconsin (\$2.00) all charge for statement requests.²⁸⁴ As the CFPB noted, very few consumers request paper statements,²⁸⁵ and this is a minimal burden. Yet it can be important for consumers when they need it.

24 months of transactions online. While we appreciate the proposal to lengthen the available online account history from 60 days to 18 months, we urge the Bureau to go a bit farther, to 24 months. That allows a consumer to get a complete two-year picture of her finances and to see seasonal patterns. A consumer doing her taxes on October 15 – as one of the writers of these comments has unfortunately done – may need to see last minute information online about transactions earlier than March 15 of the previous year.

7 years of statements upon request. With respect to written account histories, here again, 18 months is better than 60 days, but information needs to go back much farther. Seven years would be appropriate. Just like any bank account customer, a prepaid cardholder who uses the card as her primary transaction account could be audited by the IRS, need to show a longer history to apply for a mortgage, or have another reason to look up an older charge. Consumers who do not receive paper statements are unlikely to have these records, and the only way to obtain them is to call and ask.

No fee for any ad hoc statement requests. Proposed Comment 18(c)-3 permits an issuer to charge a fee for providing account information that is older than the transaction histories that the issuer is required to provide. We oppose this provision. All ad hoc statements should be free. Less than one percent of consumers seek even recent statements, and it will be quite rare for a consumer to need older information. If an institution has older information in its computers, it should cost no more to print out and mail that information than newer information. If an issuer is getting relief from the monthly statement requirement, it should be required to supply the information for free when it is needed.

Permitting a fee for older account histories will also confuse consumers about their right to free information. The fee might be a required disclosure on the short form if the issuer does not have three other incidence-based fees. Even on the long form, where more detail can be provided, seeing the fee may confuse consumers.

Automatic periodic statements. While the proposed rules give consumers the right to receive a free paper statement every month if they request, the rules do not require the issuer to give the consumer the option of signing up for regular statements without a phone call every month. Consumers should

²⁸⁴ See Exhibits 27, 30, 36.

²⁸⁵ 79 Fed. Reg. at 77270 ("generally well under one percent of active cardholder-months").

have the option of signing up for automatic, periodic paper statements. While written statements do not need to be provided for all consumers, many consumers do not have computers or smart phones. Even if they do, they may find it more convenient to review their accounts for fees and unauthorized charges through paper statements rather than by remembering a password and logging in every month. The CFPB's own data shows that consumers do not access their accounts online. The fact that few consumers are likely to sign up means that it will not be a large burden to supply periodic statements to those who want them.

Although the consumers in the CFPB's focus groups did not express interest in paper statements, those focus groups were not exhaustive. The prepaid card customer base is diverse and growing larger and more diverse every day. Older consumers who are more accustomed to paper use prepaid cards, and paper statements make it easier to keep financial records.

Consumers are also not yet accustomed to thinking about prepaid accounts as their long term bank account. Once that mental shift occurs, consumers may want regular paper records. News reports of identity theft targeted at prepaid cards may also lead consumers to want easier ways to glance at all their recent transactions.

Consumers who want paper statements should not have to call each month – taking up customer service time and potentially paying a fee. Getting regular statements should be an option for those who want them. Statements should be free or for a minimal fee of about \$1/month. (For prepaid cards that are credit cards, however, as we discuss in Section XIII.B.4, the CFPB should clarify that no fee can be charged for paper statements to avoid coercing card holders into consenting to electronic statements.) The CFPB's data show that the cost providing ad hoc paper statement is about \$1, including the cost of fielding the incoming call.²⁸⁶ Consumers should not be dissuaded from getting the information they need to manage their accounts by a fee that is large than is needed to cover costs.

Annual transaction histories. Consumers should also have the option of an annual transaction history. Some consumers may not need monthly statements but will want a summary of their transactions for record-keeping or tax-time purposes. As discussed below, notice of the availability of an annual history should be provided as part of the annual error resolution notice.

Monthly and year-to-date fee totals. We support proposed § 1005.18(c)(4), which requires electronic or written transaction histories to supply monthly and year-to-date fee totals. Setting that information apart clearly is important to helping consumers to understand the cost of their accounts and how to minimize it. In fact, fee total information is so important that the CFPB should also require issuers to offer the option of opting in to automatic text messages or emails with that information.

Third-party fees. Proposed Comment 18(c)-5 states that account histories do not need to summarize third-party fees. However, the CFPB has asked whether such fees should be listed if the issuer is able to determine the amount. This information would be extremely useful and we urge the CFPB to require it. If a consumer withdraws \$40 cash from an out-of-network ATM that charges a \$2.50 surcharge, the withdrawal will appear as \$42.50. An ATM withdrawal in an odd amount can be used to determine ATM surcharges. Providing monthly and year-to-date totals for ATM surcharges will help consumers to understand what they are paying and how they can avoid those charges. Those surcharges can be a very significant part of the cost of a prepaid card. For example, the New York Attorney General found that

²⁸⁶ 79 Fed. Reg. at 77270 n.462.

employee withdrew cash from out-of-network ATMs more frequently than they did from in-network ATMs.²⁸⁷

Along with a summary of ATM surcharges, the CFPB should require issuers to include a statement such as: “You can avoid these fees by using network ATMs, which can be found by using our mobile app, calling customer service, or visiting our website.”

Methods to locate network ATMs. As discussed in Section VIII.B below, the long form should inform consumers on how to locate network ATMs. That information should also be included on statements and in a prominent location on the issuer’s website.

D. Email and text alerts

While we appreciate the proposed rules providing important information in account histories and statements, very few consumers will access that information. The CFPB’s own data show that prepaid cardholders rarely get written statements *or* access their account histories electronically. Not a single prepaid provider that shared information with the CFPB had more than one percent of active customers requesting written histories on a regular basis.²⁸⁸ But electronic access to account history – as distinct from balance information – also appears to be very low. When one program manager provided electronic periodic statements to all of its customers, only one percent of active accounts viewed the statements.²⁸⁹ The number is likely even lower in programs that do not email electronic statements and rely on consumers to check the website on their own without any reminder.

Yet statements provide information that is important for consumers to see. A consumer who does not regularly review her statements may not see unauthorized charges or fees that add up.

Consequently, we believe that one of the requirements for modification of the Regulation E statement requirement should be offering the option of signing up for email or text alerts for one or all of the following pieces of information:

- Individual transactions;
- Low balance alerts;
- Deposit alerts;
- Individual fees charged;
- Monthly fee totals, including year-to-date;
- Availability of the monthly statement;
- Availability of an annual statement;
- Annual error resolution notice;
- Potentially unauthorized charges and any corresponding decision to freeze the account.

Providing the option of receiving this information by text or email will help consumers to manage their accounts.

²⁸⁷ New York Attorney General Payroll Card Report, *supra*, at 8 (Out-of-network ATM withdrawals amounted to 46% to 67% of cash withdrawals at the four large retailers who supplied information, compared to 25% to 49% for network ATM withdrawals.).

²⁸⁸ 79 Fed. Reg. at 77179.

²⁸⁹ 79 Fed. Reg. at 77269.

Any email or text that includes out-of-network ATM charges (either an individual transaction or a monthly total) should include a statement that the fees may be avoided if the consumer uses network ATMs. The message should also inform the consumer how to find such ATMs.

An email or text about the availability of the monthly statement should remind the consumer of the ability to access the statement online or a written statement upon request.

The consumer should have the option of selecting any of the alerts listed above individually and should not have to generally opt in to electronic communications. In particular, opting in to alerts should not require consent to receive marketing, informational or promotional messages. Many consumers have email or text overload and should be able to selectively choose the information that is important to receive.

E. Mandatory electronic communications

The proposed requirement for free access to account balances and account histories is triggered only if a prepaid card issuer takes advantage of the Regulation E modification and does not provide statements. However, some issuers could choose to avoid the requirements that come along with the modified rules – such as free access to balances and written statements – by instead providing electronic statements and requiring consumers to “consent” to electronic communications. To avoid this result, the CFPB should clarify that issuers that do not follow the modified requirements must offer the option of paper statements. In addition, all prepaid cards should be required to offer free access to account information, even if they offer statements.

The essence of the Electronic Signatures in Global and National Commerce (“E-Sign”) Act²⁹⁰ is that electronic information may substitute for legally required written information only if the consumer *chooses* an electronic format.²⁹¹ The consumer must have “affirmatively consented” to electronic writings, must be informed of the availability of paper records, has the right to withdraw consent, and must be told the procedures for doing so.²⁹² As the CFPB explained: “Before receiving such consent, the E-Sign Act requires that financial institutions make clear to a consumer that they have the option of receiving records in paper form”²⁹³

Yet many products require consumers to “opt in” to electronic statements as part of the application process, without giving consumers the option of paper statements. The leading provider of prepaid cards with overdrafts fees today requires consent to the delivery of electronic disclosures.²⁹⁴ But just because a consumer has an email address does not mean that she has regular internet access.

²⁹⁰ 15 U.S.C. § 7001 *et seq.*

²⁹¹ For a longer discussion about the importance of the E-Sign Act, see NCLC, “Comments to the Consumer Financial Protection Bureau regarding Streamlining Inherited Regulations, Docket No. CFPB -2011-0039” at 17-23 (June 4, 2012) (“NCLC Streamlining E-Sign Comments”), http://www.nclc.org/images/pdf/rulemaking/cm_cfpb_reply_comments_4_june_2012.pdf.

²⁹² See 15 U.S.C. § 7001(b)(2), (c); see generally National Consumer Law Center, Consumer Banking and Payments Law § 11.3.5.1 (4th ed. 2009 and Supp.).

²⁹³ 79 Fed. Reg. at 77170.

²⁹⁴ “IF YOU WISH TO PARTICIPATE IN THE OPTIONAL OVERDRAFT PROTECTION SERVICE YOU MUST CONSENT TO RECEIVE COMMUNICATIONS FROM US IN ELECTRONIC FORM THROUGHOUT THE ENTIRE DURATION OF YOUR PARTICIPATION IN THE OVERDRAFT PROTECTION SERVICE.”

Voluntary consent to electronic communications is important even as some prepaid cards move into the virtual world. A consumer who uses a mobile payment system does not necessarily have sufficient data available at all times and also may not be comfortable monitoring the account completely on a mobile device. Mobile devices do not provide a record the consumer can keep. We discussed these issues in greater length in earlier comments.²⁹⁵

In addition to consent, E-Sign requires that the consumer demonstrate the ability to access electronic information and that the information be provided in a form the consumer can keep. Nevertheless, we suspect that some companies are not following these requirements, and the record keeping requirement in particular may not be satisfied by mobile payment systems.

Whether or not electronic or paper statements are being provided, we urge the CFPB to require compliance with the prepaid card account information. Free access to balances and account information is important to managing an account even if the consumer also receives statements.

VIII. Disclosures

We support the proposal to improve fee transparency by requiring all prepaid cards to disclose fees in both short- and long-form charts that are uniform and can be easily compared. We generally support the design of both forms and believe that they will improve competition and help consumers to understand the terms of their accounts. We have several suggestions below to improve the disclosures.

A. Short form

1. Overall

We support a required short form for all cards, on the outside of packages sold at retail and provided in a conspicuous manner in other settings. While consumers need access to complete information, prepaid cards can be deceptively complex products. Highlighting the most salient information in a usable form will be very helpful to consumers.

In general, the overall proposed design strikes a good balance. It provides as much information as possible without overwhelming consumers, enabling them to find the most critical information quickly and minimizing the potential for evasions.

We agree that only the highest fee that can be charged should be displayed on the short form. Adding too much information to the short form will make it less likely that any of the information will be understood. The rules need to ensure that consumers know about the top fee they could pay. Issuers will have plenty of incentives to find ways to highlight ways to avoid or pay lower fees. That will also encourage consumers to look at the long form.

https://www.netspend.com/account/terms/HEB%20Premier%20GPR%20Visa%20Bofl-ODP-Eng-11AUG14_HTG.pdf.

²⁹⁵ See NCLC, "COMMENTS to the Consumer Financial Protection Bureau regarding Streamlining Inherited Regulations," Docket No. CFPB -2011-0039 at 17-23 (June 4, 2012), http://www.nclc.org/images/pdf/rulemaking/cm_cfpb_reply_comments_4_june_2012.pdf.

Our specific comments and suggested improvements are below.

2. Single APR-like number reflecting average cost

We continue to urge the CFPB to develop a single number, like the APR, that can be used to compare cards based on actual usage. Two cards could have identical fees shown on the short form but result in wildly different costs. One card might have a small ATM network and charge declined transaction fees on every declined transaction. The other card one might have a large ATM network, multiple methods of communicating with consumers to encourage them to use surcharge-free ATMs, a bill payment feature that avoids the need to withdraw cash to pay a landlord, and waivers for four declined transaction fees each month.

While consumers use cards differently and a single number cannot convey those nuances, neither does the APR. But consumers who do not pay interest and care more about annual fees or rewards know to look for those items when shopping for a credit card. Similarly, a consumer who is looking for a card for purposes of online purchases can focus on ones with low or no POS fees and can disregard ATM fees that may increase a monthly average. Moreover, a consumer's mental calculations about cost based on a complicated fee disclosure are not likely to be accurate and cannot take into account subtle differences not displayed on the short form. A single number is a rough rule of thumb, but the full short form – and full long form – make clear that the consumer needs to go beyond that number.

A single number based on actual average costs also will have a powerful effect on competition. Issuers will compete to bring that number down, rather than to maximize revenues within the constraints of the short form. Lower average costs will benefit consumers overall.

Alternatively, the CFPB could develop an H/M/L (high/medium/low) disclosure ranking based on actual cost. That would avoid a specific number that might not be accurate for all consumers.

3. Cards with multiple service plans

Model Form A-10(f), the short form disclosures for prepaid accounts with multiple service plans, is difficult to compare to the other short forms and should be rejected. It lacks the large fees at the top to draw consumer's attention and is overall less appealing. Consumers will be confused when trying to compare it to other short forms. Prepaid card issuers who wish to minimize their fees may add multiple plans just so that they can take advantage of this form and start with a \$0 for the monthly pay-as-you-go charge.

Instead, the CFPB should consider a way for a card to have two short forms, perhaps one on an outside flap and another one on an inside flap. That way, an issuer could display the fees for a consumer who sets up direct deposit or otherwise is a more regular user. Separate short forms could also be used on websites, where there is more flexibility.

4. Top line fees

We support the basic design of the short form, with the fees that consumers are most likely to care about in larger font on top. Drawing attention to those fees increases the likelihood that consumers will actually look at them. We agree that monthly, per purchase, and ATM withdrawal fees should be on the top line.

However, we disagree about listing cash reload fees in the top line. Consumers who load cash onto their cards mostly do so by purchasing packs sold by third parties, not the card issuer. Thus, many cards would list a \$0 fee even though consumers would pay to load cash. On the other hand, a company that has a proprietary reload mechanism would need to list that fee, making the card appear more expensive when it might not be.

In addition, as more and more retailers are beginning to offer free cash loads, it is not clear that cash reload fees are even one of the more important fees. The CFPB needs to come up with a mechanism to compare the total cost of loading cash – including both card fees and third party fees – and then list the total. It probably makes sense to list it in the second category of fees, where there is more space to explain how the fees are incurred.

If the CFPB eliminates the cash reload fee from the top, perhaps it should consider making the fourth fee an incidence based fee. For many cards, it would be the same type of fee. But if another fee was more important for a given card, it would draw more notice.

We agree with the proposal that the purchase price of a card sold at retail does not need to be one of the top line or required fees. However, it should be a potential incidence-based fee, as noted in proposed Comment 18(b)(2)(i)(B)(8)(I)-2. Requiring the fee to be listed could take up scarce space on a card – such as online cards – that do not have such fee. For cards sold at retail, the purchase price can be made obvious on another part of the package, as is common today. Consumers will certainly notice the price they pay to acquire the card. Highlighting a one-time fee in the short form could overemphasize it and mislead consumers into comparing it with recurring fees. Some consumers could choose a card that has a lower purchase price even though, overall, a card with a higher price but lower recurring fees is less expensive.

On the other hand, we understand that some consumers buy a new card every month rather than pay monthly or reload fees. If a substantial number of consumers incur purchase or activation fees, then those fees will show up as incidence-based fees and consumers can see them on the short form.

5. Other required fees

Overall

We agree that balance inquiry, customer service and inactivity fees should be required to be listed on the short form, and that they should be in smaller font below the top line fees. Those fees are important fees that consumers should see before they buy a card. We agree that the highest fee possible should be disclosed if there is a range of fees, to warn consumers and prevent evasions and deception.

However, it would simplify the short form and free up space for other important information if the CFPB were to follow our suggestion, discussed above, to prohibit balance inquiry and customer service fees. For example, eliminating those fees from prepaid cards and from the short form would permit space for additional fees, or for a quick response (“QR”) code or symbol to indicate bill pay.

Customer Service

Making clear that automated customer service calls are completely free is especially important to avoid making the short form misleading or bumping additional fees to the long form only. If only one line for “customer service” is disclosed, consumers will not know whether that fee is imposed for automated

calls, live calls, or both. If they understand it to include IVR calls, they may not realize that calls to access balance information must be free.

The interaction between IVR and live customer service calls is also very confusing. Some states provided different number of free transactions for IVR and live calls. But it is necessary to go through the IVR menu to get to a live agent. Thus, a consumer will use us a free IVR call even if she ends up paying for a live call.

This type of detailed information will be provided in the long form. But many consumers will not look at that long form. They will rely on the short form for a summary of the basic information about how to use their cards.

Listing IVR and live calls as separate items on the short form would also use up one of the lines for fees. Consumers would then have less information about other fees readily accessible on the short form.

While we believe that all customer service calls should be free, at a minimum IVR calls should be. In that case, a much more clear disclosure on the short form could read:

Live customer service	\$1.50 per call
-----------------------	-----------------

Such a disclosure will highlight for consumers the fact that they will be charged for live calls but can avoid them if they use the automated menu.

Inactivity fees

We agree that inactivity fees, if charged, should be listed on the short form. The fees can also be known as “dormancy” or “maintenance” fees. The CFPB should require the term “inactivity” to be used to avoid confusion.

But we also urge the CFPB to ban inactivity fees. The Bureau itself appears to have concerns about inactivity fees, noting that the requirement to list the fee “is not an endorsement of the practice of imposing such a fee.”²⁹⁶ If a card has been inactive for a period of time, the issuer should make an attempt to contact the consumer and inquire whether the consumer wishes to continue using the card or if the funds should be returned and the account closed. If the consumer cannot be reached, a check should be mailed. At best, inactivity fees should be limited to accounts with only tiny amounts of remaining funds such as under \$5.

Proposed Regulation E Comment 18(b)(2)(i)(B)7)-1 states that issuers should specify whether an inactivity is imposed in lieu of or in addition to the periodic fee. We oppose this comment, which seems to permit a practice that should be prohibited. To the extent that a financial institution is using inactivity fees as a way of closing out inactive accounts with only a couple of dollars left, a monthly fee will serve that purpose. If an account has more substantial funds, it is all the more important to return the funds. Piling on both monthly and inactivity fees in order to take the consumers’ funds is inappropriate.

²⁹⁶ 79 Fed. Reg. at 77160.

6. Incidence-based fees and other fees

Incidence-based fees are important. We support the requirement to include up to three incidence-based fees on the short form. This rule is especially important because it prevents prepaid cards from designing their fee schedules to minimize the fees that are on the short form and to maximize those that are only listed on the long form. Similarly, we believe that it is very important to include the statement: “We charge X more fees not listed here” if not all fees are listed on the short form. That disclosure will encourage issuers to simplify their fee schedules so that all fees are disclosed on the short form. The short form already provides space for nine fees, more than enough for most cards. If a card charges additional fees, consumers should not be misled into thinking that the short form is comprehensive, and should be encouraged to review the long form.

Incidence based on revenue, not occurrences. Incidence should be determined based on revenue, not number of occurrences. That way, the most costly fees, rather than simply the most numerous fees, would be included on the short form. It is more important that the form warn consumers about a large fee that impacts a smaller number of consumers (but enough to generate significant revenue) than a very small one that is charged more often. In many cases, selection based on revenue or occurrences will not change the fees that are disclosed on the short form, especially in light of the fees that are required to be disclosed.

But it can make an important difference for some of the larger fees, especially overdraft fees. For example, the Federal Reserve Bank of Kansas City did a study based on data provided by NetSpend. The “other” category – which includes overdraft fees – was dead last out of nine categories in volume at 1.1%. But it came in seventh at 2.5% in terms of revenue. (As discussed above, however, we believe that overdraft fees should be banned, and if not banned, then one of the fees required on the short form.)

The converse was true for a small fee, IVR (automated telephone call) balance inquiries. IVR fees were third in volume at 12.9%, but only sixth in value at 5.6%.

Chart 4: Average Fee Composition, NetSpend Cards (In Volume)²⁹⁷

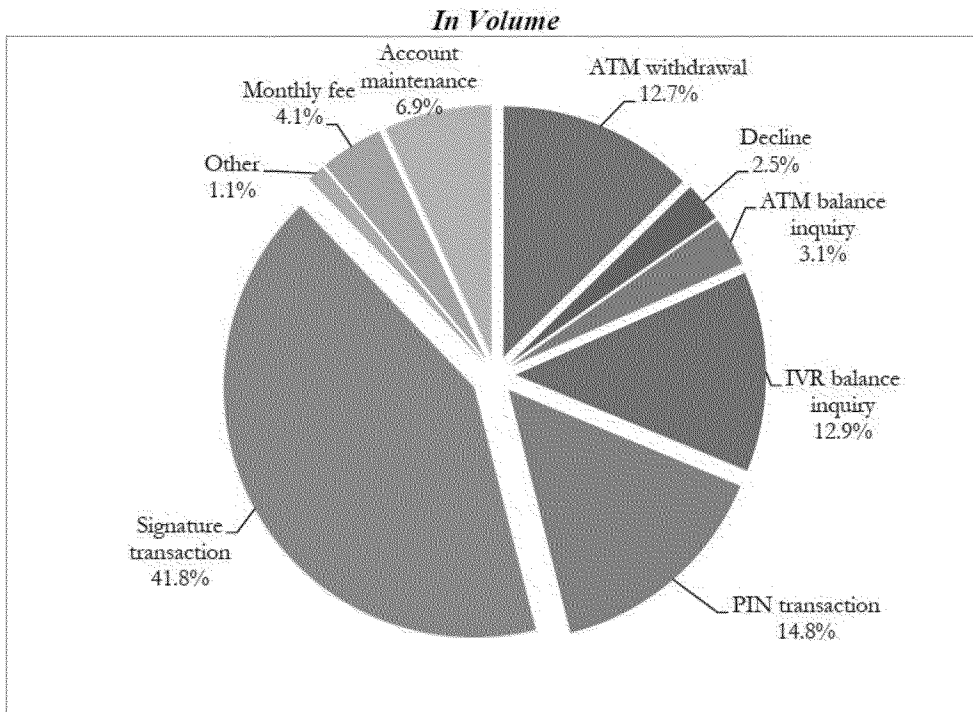
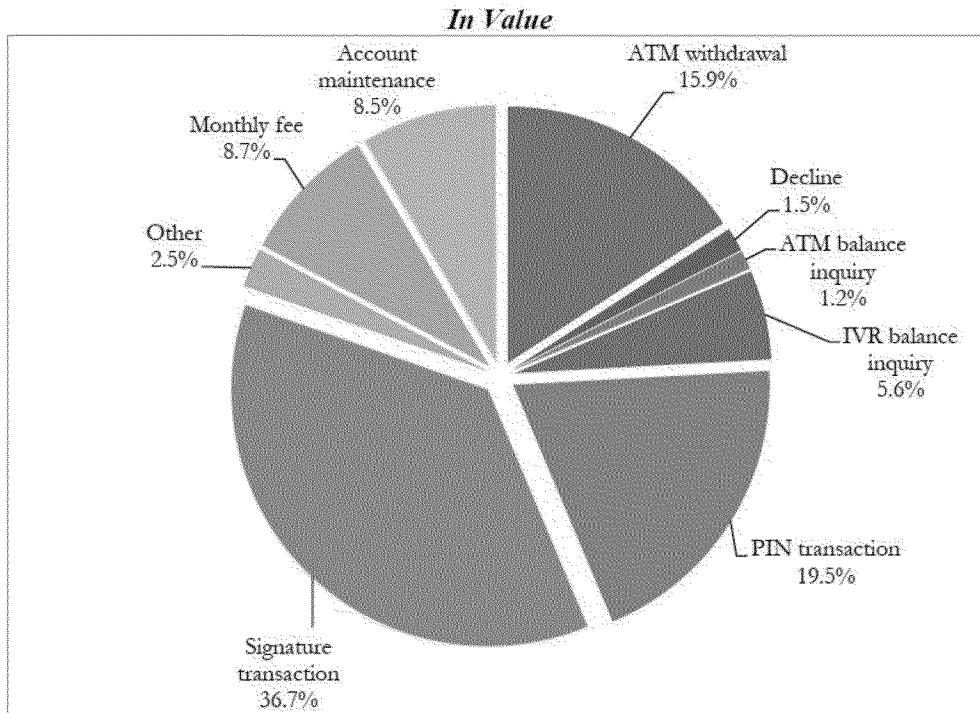


Chart 5: Average Fee Composition, NetSpend Cards (In Value)²⁹⁸



²⁹⁷ Source: Kansas Fed, GPR Report, *supra*, at 67.

²⁹⁸ *Id.*

If purchase price is potentially an incidence-based fee, it could also be one of the higher incidence fees even if it is not one of the costliest. Every consumer who purchases a card at retail will pay the fee (though only once), but an overdraft fee could be higher and cost consumers more, even if fewer consumers pay it. We believe it is more important to highlight the fees that cost consumers the most. Otherwise, prepaid cards could take advantage of and impose significant costs on a smaller number of consumers in order to subsidize others.

Fees not incurred in previous 12 months. Proposed § 1005.18(b)(2)(i)(B)(8)(I) and proposed Comment 1 require incidence-based fees to be disclosed only if they were incurred in the previous 12 months. We believe that there should be no 12-month limitation. A fee like a \$100 legal process fee may be charged sporadically but could be devastating to a consumer who incurs it. Consumers who use prepaid cards may have unpaid debts and may wish to avoid cards that can compound the harm from a garnishment order from a debt collector. If a fee is small and rarely charged, then the issuer should be encouraged to eliminate it.

No de minimis exception. There should not be any “de minimis” exception for fees on the short form. If a fee is so tiny or imposed on so few people that it is nearly immaterial, then providers should be encouraged to eliminate it. If not, it will fall on someone and could significantly harm that person. That consumer should know.

For example, in our review of state payroll cards, we found that many of them charge \$100 “legal process” fees.²⁹⁹ The Chase Liquid card, which is generally a low fee card, also charges an \$80 legal process fee, which is buried in the fine print on its website. Prepaid cards are marketed to consumers who are eager to avoid a credit check, and many of those consumers may have debts that are being collected against them. In fact, some consumers turn to prepaid cards in order to protect their funds from garnishment.³⁰⁰ A \$100 fee could be devastating to those consumers, and they should not have to dig through the details of the long form to see it. If the fee is almost never imposed, then it will not make it onto the short form based on volume or revenue. But if the revenue is significant, the fee should be listed on the short form. That fee is more important to warn a consumer about than a \$0.10 fee that is imposed on more consumers.

Inapplicable fees. We support listing a fee as “\$0” if there is no fee for a service and do not believe that designation will be confusing. If, however, a service is not available, it should say “not offered.”

7. Other fees

“Research” fees. As discussed in Section IX.E below concerning dispute resolution, the CFPB should prohibit “research” fees.

“Legal process” fees. As discussed in Section VI.I above under unsolicited issuance, the CFPB should prohibit fees for “legal process.”

²⁹⁹ For example, Arizona, New Jersey, New Hampshire, Texas, and Washington all charge \$100 “legal process” fees. See Exhibit 19, 25, 26, 31, 34. The fee is \$40 in Ohio. See Exhibit 27.

³⁰⁰ Unless they contain exempt funds, prepaid cards could be subject to garnishment. However, garnishment of prepaid cards appears to be quite rare to date.

“Stop payment fees.” As discussed in Section IV.K above under credit card penalty fees, the CFPB should prohibit stop payment fees on cards that can have negative balances or other credit features.

Fees for account closing/return funds by check. Some cards also charge a fee to close the account and/or to return the balance by check. For example, the South Dakota state payroll card has a \$15 fee to return funds by check and the Kansas state payroll card charges \$10.³⁰¹ On some fee schedules, it was difficult to tell whether the fee was only for requesting a paper check or also simply to request that the account be closed.

The CFPB should ban these fees. Consumer should not be charged if they wish to close an account, and receiving the balance by check is often the only convenient or manner to withdraw the full amount of the remaining. As noted above, bank tellers are often unfamiliar with rules for withdrawals from prepaid cards.

PIN changes. When we began our research into state payroll cards, we observed a small number of cards that charged consumers who changed their PINs more than a certain number of times per year. Those fees now seem to have been eliminated on state payroll cards. We do not know if other cards charge such fees.

Certainly, consumers who have concerns about the security of their cards should not be charged for changing the PIN. The regular news about data breaches is reason for endorsing this practice, not penalizing it, whether the consumer is changing the PIN in response to a particular report or merely as a proactive measure.

Standardized term for bill payment. One of the incidence-based fees could be a fee for using a bill payment feature on the prepaid card issuer’s website to make electronic and check payments. The CFPB should require a standard term (i.e., “bill payment”) to describe bill payment features. The rule should also prohibit use of that term in solicitations and advertisements when only describing the ability to use a card to pay bills on a merchant’s website.

8. Disclosure of overdraft and other credit features

As discussed above, overdraft features should be eliminated from prepaid cards. Doing so will also simplify the short form, limit the amount of information the consumer is expected to process, and increase the likelihood that the information provided will be meaningful to and understood by consumers.

We also believe that it is unnecessary to disclose the *lack* of an overdraft or other credit feature. Most cards do not have such features, which consumers do not expect on prepaid cards. Raising this issue could be confusing. The disclosure on cards that *do* have such features will also stand out more starkly when compared to one that does not. But the warning should include the word “overdraft.”

We support a warning for consumers to the extent that a prepaid card does have an overdraft or other credit feature. This is very important information for consumers. Difficulty with credit, the desire for controls to limit spending, or the search for a safe payment mechanism are key reasons why nearly

³⁰¹ See Exhibits 22, 30.

every consumer turns to prepaid cards. A card that will offer credit is significantly different from one that will not, and that key difference should be conveyed through the short form.

However, more prominent and complete information is needed about overdraft charges, if permitted. The consequences of overdrafts that can be triggered inadvertently are especially critical for consumers.

Overdraft fees, if allowed, should be listed on the short form, even if it is not one of the highest incidence fees. Overdraft fees tend to be quite high relative to other fees.³⁰² They can have a big impact on the consumers who incur them, even if those consumers are in the minority.

If overdraft fees can increase after the first year, the higher, second-year fee should be listed, not the first year fee, which is essentially a promotional rate. This is consistent with the rule for credit cards, which requires disclosure of the second year APR in the disclosure box for a card that has a lower first year promotional rate. As with other fees that can vary, an asterisk can indicate that the fee could be lower, and the details can be provided on the long form. The issuer could also use any other part of the packaging to display any waivers or discount the first year. However, as discussed above, we urge the CFPB to extend the fee harvester limits beyond the first year to avoid bait-and-switch tactics.

Any fee triggered by an overdraft or negative balance should be **labeled as an “overdraft fee,”** whether it purports to be a transfer fee, load fee, negative balance fee, nonsufficient funds fee or any other fee triggered by an overdraft or negative balance. That term is understood by consumers, and avoiding fees in the event of an overdraft is important to many consumers. Issuers should not be allowed to hide the ball by giving the fee another name.

In addition to listing the fee, we support a separate disclosure about the potential for overdraft or other credit features. However, it is important that the warning **include the word “overdraft”** if the feature is one that can be triggered by overdrafts. Merely mentioning “credit-related fees” is opaque and will not be understood by consumers nearly as well as using the word “overdraft.” As the CFPB observed, the word “overdraft” is clearly understood by and is important to consumers.³⁰³ It would be strange to use the word “overdraft” on the disclosure for cards that do not have overdrafts but to omit it from card that do.

The disclosure should be **different if the credit feature can be triggered by overdrafts or if it cannot be.** A card that can be triggered by overdrafts enables credit to be used unthinkingly and potentially in situations when the consumer would prefer to avoid credit or should think twice. Thus, use of the word “overdraft” is important. But an institution that offers a low cost line of credit that can only be used if the consumer affirmatively chooses to should not have to disclose “overdrafts” that cannot happen.

The warning about “overdraft” and “credit” should be more prominent, in larger, bold font. The current disclosure is in only 8-point font and may be overlooked. We suggest 10-point font for the words “overdraft” and “credit.”

³⁰² While the fee harvester rule will limit fees in the first year, high overdraft fees could still be charged. An issuer could charge one or two fees and then waive the remainder until the first year is up. Or, the issuer could charge lower fees in the first year and then increase them in the second.

³⁰³ 79 Fed. Reg. at 77164.

Thus, the two possible disclosures would be:

This card may charge **credit**-related fees.

This card may charge **overdraft/credit**-related fees.

It is hard to overemphasize the importance of warning consumers about overdraft potential. As studies, the CFPB's focus groups, and comments by other organizations have shown, most consumers who turn to prepaid cards want to avoid overdraft fees.

Some cards that provide overdraft services appear to go out of their way to hide the potential for overdraft fees when marketing their cards. ACE Cash Express, for example, emphasizes "control" and the "No-fee \$10 purchase cushion" on its website, with no mention of the potential to opt in to overdraft fees.³⁰⁴ NetSpend's home page emphasizes "no credit check" and how consumers can avoid "excessive fees" from banks, with no mention of the overdraft fees it charges.³⁰⁵ Additional marketing messages are discussed in Section II.D above. If the CFPB is going to permit overdraft charges on prepaid cards, it must make sure that consumers who are looking to control spending and avoid overdraft fees can do so.

9. Lack of deposit insurance

As discussed above, deposit insurance should be required on prepaid cards that are reloadable and hold more than \$500. Disclosure is not an adequate substitute for safety.

But if the CFPB is going to permit uninsured cards, a stronger and more visual warning should be required. The current disclosure is in only 7-point font and is listed at the bottom along with a lot of other verbiage that will be ignored. Instead, the CFPB should require use of the FDIC symbol with a slash on it:



Other institutions have used such warnings,³⁰⁶ which will be clearly understood by consumers and will be more likely to be noticed.

If the CFPB retains the current short form disclosure – "This card does not provide [FDIC][NCUSIF] insurance." – only the term "FDIC" should be used, unless the card is issued by credit union. The same language should be used whether the card is issued by a bank or a nonbank.

³⁰⁴ See <https://aceelite.acecashexpress.com/prepaid-debit-card/applyNow.m>.

³⁰⁵ See <https://www.netspend.com/>.

³⁰⁶ See, e.g., <https://www.central-bank.net/business-insurance.htm>.

10. Methods to access information about other fees and the long form

While many consumers will shop on the short form alone, access to complete information in the long form is important. The short form has its limitations. It cannot provide all the details and conditions on the fees listed. It will not describe ways that consumers can avoid fees. And the short form may not include all of the fees.

We support the disclosure on the short form that “We charge 6 other fees not listed here” if that is the case and to put that warning in bold font. The warning might be more easily read if the bold font were limited to “6 other fees.”

In addition to providing access to the long form, cards that charge fees that are not listed on the short form should be required to have physical way to see those fees at retail. As discussed below, none of the methods of accessing the long form is fully satisfactory, and the long form itself is complicated and consumers may ignore it. Cards with numerous fees should have a flap that is not secured that continues the short form chart with any additional fees. The disclosure could say: “We charge **7 other fees**. Open here to see them. =>”

Similarly, in order to provide access to the long form, enabling consumers to see a physical form at retail is the best option. Consumers should not have to have a smartphone to see all the fees. Even for those who do, consumers are more likely to look at a physical form than to call in and listen to a long message or type in a URL. The CFPB’s own testing showed that some consumers did not notice or understand the methods to access the long form.³⁰⁷ The package can be designed so that it has a flap that is either unsecured or secured only with Velcro and can be opened before purchase without breaking the packaging. The model package that the Pew Charitable Trusts developed includes a folded long form that can be seen at retail. Consumers could be encouraged to open the flap by a statement such as: “For details on all fees and services, open the flap below or call 800-234-5678 or visit bit.ly/XYZprepaid.”

Non-English-speaking consumers will also benefit from direct, physical access to the long form at retail. A telephone message in English – or even in Spanish – may not work for many consumers.

We support listing both a telephone number and a URL. A telephone number is important for consumers who do not have smartphones or internet access.

For consumers who call for fee information, the CFPB should provide more explanation on how to disclose the long form. In fact, a different “form” is necessary, as the long form itself will be unintelligible or tedious by telephone. The explanation should begin with the fees in the short form, and then list any additional fees. The consumer can then be told additional information, such as the further conditions or details that are in the long form. The telephone disclosure should also offer to text or email the consumer a link to the full form.

The URL on the short form should be a short one that consumers can more easily type in. The rule should limit the number of characters that the URL can contain.

³⁰⁷ 79 Fed. Reg. at 77154.

We also urge the CFPB to add at least one more method of accessing the long form. We doubt that many consumers will either listen to a long telephone message or type in a URL. They are more likely to scan a QR or bar code or send a short text that solicits a reply with a link to the long form.

A short SMS code takes up little space and could probably fit at the end of the existing disclosure sentence (which might be shortened a bit by omitting “and conditions”). A text has the advantage of working for people with either smart or basic phones. Even if a basic phone cannot click on the link in the text, a text can be forwarded to an email that can be viewed on a home computer. In addition, a text can be retained for viewing at a later time. Thus, a consumer who is shopping but is not ready to buy could send the text, get the response, and then look over the long form later at home, when the consumer has more time – and even has the capacity to compare the card to options on the internet.

QR or bar codes are even easier to use. The CFPB expresses concern that QR adoption is low. We are not sure if that is the case, and at any rate expect usage to grow as both smartphones and understanding of QR codes rises. One survey, for example, found that 19% of adults had used a QR code in 2013 and momentum was growing.³⁰⁸ We encourage the CFPB to refine the short form so that it has space for a QR Code.

11. Identical, not substantially similar, terms

One of the important benefits of the CFPB’s proposed short and long forms is the use of the same terms across different cards. When conducting our reports on unemployment prepaid cards and our investigation of payroll cards, we found it sometimes quite difficult to understand what a particularly fee was. For example, some cards had a fee for “cash advance.” It was not clear if that was a credit feature or, more likely, a teller withdrawal. Consumers who are not used to withdrawing money from prepaid cards at bank tellers would unlikely have no idea what that meant.

Proposed rule 1005.18(b)(2) requires fees to be labeled with the terms identified in the rule or “substantially similar terms.” We urge the CFPB to require the terminology to be identical, not similar, in order to avoid confusion. Issuers should not be allowed to use different terms for the items listed in the proposal.

12. Font size

One overall concern about the short form is that the font size is quite small for much of the information: 7 or 8 point for all but the top line fees. This problem can be seen in the model disclosures the CFPB provided on its website.³⁰⁹

³⁰⁸ See, e.g., “QR Code Adoption: 2013 Trends & Statistics,” <http://www.scanlife.com/blog/2013/02/qr-code-adoption-2013-trends-and-statistics/>.

³⁰⁹ See http://files.consumerfinance.gov/f/201411_cfpb_prepaid-model-sample-disclosure-forms.pdf.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
\$4.95*	\$0 with sig. \$0 with PIN	\$0 in-network \$2.00 out-of-network	\$2.00*
This card may charge credit-related fees.			
ATM balance inquiry (in-network or out-of-network)			\$0 or \$1.00
Customer service			\$1.50 per call
Inactivity (no transactions for 3 months)			\$4.50 per month
[Incidence-based fee]			\$2.95
[Incidence-based fee]			\$3.95
[Incidence-based fee]			\$1.00
*Fees can be lower depending on how and where this card is used.			
We charge 6 other fees not listed here.			
Find details and conditions for all fees and services inside the package or call 800-234-5678 or visit bit.ly/XYZprepaids .			
Register your card with XYZ Prepaid Company to protect your money.			
This card does not provide [FDIC][NCUSIF] insurance.			
For more information about prepaid cards, visit cfpb.gov/prepaids .			

The short form looks quite clear and appealing in the large version provided on the first two pages. But when shrunk to actual size on the next two pages, most of the information other than the top four fees looks like fine print that consumers will skip over.

The small print may be unavoidable for packages at retail. But size is not constrained in other settings and the CFPB should require more readable information. Larger information should be required on websites and in settings where the consumer will be handed written information – such as by depository institutions, employers and government benefit agencies.

For example, websites should be required to display the short form in the same size as the CFPB did on the first two pages. Short forms that are provided along with other written information should be an entire separate page so that the information will stand out and consumers will pay attention to it.

13. Other important information

While we appreciate the difficulty of squeezing a lot of information into the short form, we urge the CFPB to experiment with ways to convey the following information on the short form. We note that many of our suggestions in these comments eliminate the need for information on the short form, including a ban on fees for overdrafts, balance inquiries, or customer service, and mandatory deposit insurance. The CFPB could also offer optional information that could be displayed on the short form if a particular card has few fees and extra space.

The **number of surcharge-free ATMs** can differ significantly among cards and have a big impact on cost. A disclosure of the approximate size of the ATM network could fit in the place of the disclosure about

lack of FDIC insurance (which could be omitted if deposit insurance is required, or if a symbol is used instead). The disclosure could read:

35,000 surcharge-free ATMs

The rules could provide tolerances for the number and periodic adjustments in a similar way as for incidence-based fees.

The CFPB should develop standardized symbols to indicate cards that offer bill pay or remote deposit capture. Those are key services for unbanked consumers. They can help consumers avoid ATM fees (if a bill can be paid through bill pay) or cash load and check cashing fees. It would help consumers to shop for the right cards if they could identify cards with those services.

B. Long Form

We support the proposal to require all cards to provide a long form fee disclosure in addition to the short form.³¹⁰ The conditions under which prepaid cards fees can be incurred can be quite complex, and the long form enables consumers to get complete information.

We agree that the full long form should always be provided by issuers on websites, by employers, by colleges, and in other non-retail settings. Consumers should always receive the full long form if at all possible. Any exceptions such as the one the CFPB proposes for retail settings should be minimized. As discussed above, we also believe that the long form should be accessible at retail through a flap that can be opened before purchase.

In addition, we have other suggestions for information that should be included in the long form.

Presence or absence of overdraft fees or other credit features. We support proposed § 1005.18(b)(2)(ii)(B) requiring disclosure of the possibility of overdraft (if not prohibited, as we urge) or other credit features. But the absence of such features should also be listed on the long form. The long form should be a comprehensive place to get complete information about the card. Specifying that overdraft or other credit features are not available on a card could be important to clarify and give consumers comfort.

Lack of deposit insurance. The warning about lack of deposit insurance should include more description. Unless the card is used by a credit union, it should use the term “FDIC” alone, not “NCUSIF,” which no one understands. The warning should also be part of the chart, in an “Important Notices” section at the end as follows:

Important Notices	
FDIC insurance	This card does not provide FDIC insurance. If the institution that holds or manages your funds becomes insolvent, you are not protected by deposit insurance and could lose some or all of your money.

Number of surcharge-free ATMs and ATM locator. The long form should disclose the approximate number of surcharge-free ATMs in the card network and how to locate them, including methods by

³¹⁰ Proposed Reg. E § 1005.18(b)(2)(ii).

mobile app, by calling customer service, and on the issuer’s website. That information should be called out on a separate line in the “Get cash” section, not buried in fine print on the line describing ATM fees. Phone access is important in addition to online access, as not all consumers have internet access.

In addition, the issuer’s website should be required to have a prominent link taking the consumer to a page where number and location of network ATMs can be determined. Knowing whether a card has convenient surcharge-free ATMs can be an important piece of information when shopping for a card. If network ATMs can only be found by contacting one or more third parties, such as the MoneyPass website or the websites of other ATM networks, a link to each of those websites should be provided on the issuer’s website.

Free transactions. The sample long form does not provide any examples of how an issuer would describe free transactions that are provided before a fee is charged. Yet it is common for cards to provide such free transactions and it is important for consumers to know about them and their limits. All cards issued by institutions with more than \$10 billion in assets must provide one free ATM withdrawal per month. Payroll and governments benefits cards also typically provide free ATM withdrawals, but the number can vary card to card. The same is true for the number of free live or IVR customer service calls.

We suggest that free transactions be described in a uniform manner through abbreviations as well as description, such as:

ATM withdrawal, in-network	\$1.00/1 F per W	The first withdrawal each week is free.
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The CFPB could adopt standard abbreviations such as “W” for week, “M” for month, “D” for deposit, and “Y” for year.

Bill payment features. The long form should also disclose whether bill payment features are available, using a standard term, and should list the cost of using such features to pay a bill electronically or through a mailed check. Some cards charge different fees for those two types of bill payments, and the long form should clarify whether the same fee applies even if the issuer mails a check. For example:

Bill payment by electronic payment: \$0
 Bill payments by check: \$1.00

Remote deposit capture. The availability of remote deposit capture should also be listed on the long form (using the more understandable term, “mobile check deposit”). Like bill pay, RDC is an important feature that can reduce costs. Consumers should be able to identify whether a card does or does not offer that service.

Funds availability. The long form should also disclose the issuer’s funds availability policy for cash or checks deposited by ATM, by teller or by remote deposit capture. Having access to their funds as quickly as possible is important to consumers and policies can vary considerably among prepaid cards. For example, Chase’s Liquid card typically gives consumers access to the full check the next business day

and, at a minimum, the \$200 required under Regulation CC for bank accounts.³¹¹ But the American Express Bluebird Card puts a 10-day hold on checks.³¹²

We hope that the CFPB and the Federal Reserve will soon amend Regulation CC to make clear that the Expedited Funds Availability Act applies to prepaid cards in the same manner that it applies to bank accounts, and that the timeframes also apply to mobile check deposits through remote deposit capture. Once deposit hold times are standardized, additional disclosures would be less critical, but they would still be helpful in order to help consumers compare cards that might have more favorable policies.

Cash back at point-of-sale. One of the easiest and often free ways to withdraw cash from a prepaid card is to ask for cash back from a purchase. A growing number of retailers provide this service. A PIN debit transaction is typically required in order to withdraw cash. Therefore, if the prepaid card charges a PIN debit fee, that fee will be incurred if the consumer wishes to ask for cash back. While the PIN debit fee will be described, both on the short and long forms, consumers may not understand that it will be incurred when asking for cash back. It would be helpful for the CFPB to add a line under the “Get Cash” section of the long form about cash back at retail. In addition to alerting the consumer to the fee, specifying cash back capacity will inform consumers about this convenient option to withdraw cash, which may be cheaper than incurring an ATM fee.

Third-party fees. We support proposed § 1005.18(b)(2)(ii)(A) requiring disclosure of specific third party fees if the amount is known or the third-party is an agent. But even if the amount is not known, the CFPB should find a method to ensure a fair comparison between cards that use third parties to load funds or perform other functions and those that have proprietary capacity, as discussed in Section VIII.A.4. For common fees like load fees using a MoneyPak or similar device, perhaps the CFPB should require disclosure of an approximate amount, as some cards do today.

Introductory periods. We support proposed Comment 18(b)(2)(ii)(A)-2 permitting disclosure of “\$0” or “free” only if the fee does not increase after an introductory period or if the free service requires enrollment in an additional service. This rule should also apply if an issuer has a practice of increasing overdraft, load or other fees after the fee harvester limits expire.

Electronic disclosures. We support proposed § 1005.18(b)(3)(i)(B), which requires disclosures to be provided electronically if the consumer acquires the account electronically. However, if the issuer issues a physical card, the short and long form should be including in writing along with the card.

Retainable form. We support proposed § 1005.18(b)(3)(ii), which requires disclosures to be provided in retainable form. For disclosures that are provided electronically, the CFPB should add a comment explaining that the disclosures may not be provided through a window that pops up in a form that cannot be easily printed.

Oral disclosures. A consumer who is provided the disclosures orally should be offered the option of having the disclosures emailed. As discussed above, the disclosures should also be provided in written form along with any physical access device.

³¹¹ https://www.chase.com/content/dam/chasecom/en/debit-reloadable-cards/documents/chase_liquid_v6.pdf.

³¹² “Bluebird has funding/spending limits and funds availability timeframes that are different than those of bank accounts.” <https://www.bluebird.com/>.

Other aspects of the long form. We generally support the other requirements for the long form, including a ban on use of asterisks or symbols; disclosure of cash load limits; disclosure of the Regulation E and Z information on the same page if possible; a telephone number, website and mailing address; the CFPB's website and telephone number; and machine-readable text.

C. Foreign language disclosures

We support proposed § 1005.18(b)(6), which requires both the short and long form disclosures (whether provided on a package, on a website or by telephone) to be provided in any foreign languages that the card issuer principally uses in connection with the acquisition of a card. The same is true if a card is marketed in another language. If an issuer markets in a foreign language or otherwise specifically reaches out to non-English speakers, it must ensure that it conveys full fee information in that language.

We note that the requirement to provide the long form disclosure in foreign languages would also apply if the long form is provided by telephone in a retail setting. For that purpose, in particular, it is essential that the customer service representative not only be fluent but also have fluency and expertise in the field of prepaid products and features, as discussed in Section VIII.C above.

D. Fee information online; incomplete or misleading fee information on websites and promotional materials

We support the rule that the short and long form must be provided *before* a consumer acquires an account electronically. Proposed Regulation E Comment 18(b)(1)(i)-2 appropriately warns institutions that the forms must be provided before the consumer provides any personal information and before she agrees to accept the account. Requiring the disclosures before personal information is provided is important because consumers otherwise would be inhibited from doing comparison shopping. Consumers also should not be required to provide personal information online if they are shopping for a card they intend to purchase at retail.

A few points, however, could be made more clear or benefit from an additional comment.

The comment implies but does not directly state that the consumer must actually be shown both the short and long forms and not merely a link to get to them.³¹³ The requirement to actually display the forms before the consumer begins filling in personal information should be explicit. In addition, the consumer should be required to scroll to the bottom of the forms in order to click an "apply" button in order to increase the likelihood that the consumer actually saw the form. Otherwise, the forms would be easily bypassable, especially the long form, which may not fully appear on the consumer's screen.

The CFPB should add a second comment illustrating this principle for a mobile device. Scrolling or clicking through the entire short and long form should be required. Otherwise, the consumer will never see the information and it will be easily bypassable.

³¹³ Proposed Comment 18(b)(1)(i)-2 states that a consumer should not be able to "easily bypass" the disclosures and includes a compliant example of both forms being provided on the same Web page. But the comment also indicates that an institution could "include a hyperlink to the longer form disclosure on that same Web page" if "the consumer must not have to review any unrelated links before viewing the long form disclosure." It is unclear whether this means that the consumer must have to proceed directly to the long form or instead that the link must take the consumer directly to the long form but the link is not one that the consumer is required to click through.

Apart from the direct disclosure of the short and long forms, the CFPB should issue rules prohibiting issuers from providing only subsets of fee information online and in brochures. We found this to be quite a problem when reviewing websites, FAQs, and brochures to obtain fee information for unemployment prepaid cards and state government payroll cards. Websites frequently highlighted free information or provided only a partial listing of fees in a way that implied that the information was complete. Some even provided a fee disclosure box that appeared to be complete but was not.

For example, when researching our 2013 survey of unemployment compensation prepaid cards, we found that both Alaska and Arizona had incomplete fee schedules posted on the state website.³¹⁴ Alaska's website had this Q&A:

Are there fees associated with my debit card? You can make up to two free cash withdrawals per month from any JPMorgan Chase or Allpoint ATM's. There will be a surcharge fee on other ATM's. The amount will depend on the bank that owns the ATM. The ATM will notify you of the surcharge fee and allow you to cancel the transaction prior to being charged the fee.

This answer misleads workers into thinking that the only fee is the surcharge at out-of-network ATMs, a fee that will be displayed on the screen. In fact, workers will incur a \$1.50 fee even if they use a network ATM after making more than two withdrawals per month, and the ATM will not notify the worker about that fee. The Alaska card also charges \$0.40 for all balance inquiries, \$5.00 for all teller withdrawals, \$0.50 for all declined transactions, and \$0.35 for live or IVR customer service calls after four calls each month. Yet the website says nothing about these fees and provides no link to a fee schedule.

Similarly, the Arizona website included a clear tab for "Fees," but the pop-up read: "There are no fees if you use your EPC at point-of-sale retailers, JPMorgan Chase or Allpoint ATMs." The website did not describe the fees that the card does charge or provide a link to a fee schedule, which included \$0.25 for calls after eight per month, \$0.75 to check the balance at an out-of network ATM, and \$1.50 for out-of-network ATM withdrawals after the fourth per month.

The problem was not limited to information supplied by states. Brochures provided by card issuers also emphasized free transactions and had incomplete fee schedules, directing consumers in fine print to refer to the "complete" fee schedules provided with their card.

Prepaid card providers should not be allowed to mislead consumers by over-emphasizing free transactions or providing only partial listing of fees. Online, any time a provider mentions the cost (or lack of cost) for a transaction, it should be required to provide a prominent link to the short and long forms. Written materials should not be permitted to provide partial fee schedules. They should list all fees or none unless the materials are clearly focused on a narrow issue, such as the ways in which a worker can withdraw cash for free.

E. New disclosures when a status change results in different fees

Some payroll and campus cards are designed to be used after the consumer is no longer an employee or student. In particular, monthly fees that were previously waived may start applying. Other fees could

³¹⁴ See NCLC 2013 UC Survey, *supra*, Appendix C at 39.

change as well. Issuers could even be tempted to add credit features that they refrained from offering while the consumer was an employee or student.

In addition to disclosing the dual fee structure before the card is acquired,³¹⁵ issuers should be required to send the new short and long forms to the consumer after a change in status if the account still contains funds or if new funds are added. For payroll cards, the account may well be empty and the employee will have no intention of using the account. But if new fees could be deducted from existing or new funds, the consumer should have fair warning. The consumer should be given information on how to close the account and withdraw any remaining money.

While issuers likely disclose these potential changes when consumers obtain the accounts originally, consumers should not be expected to understand or remember the new fee structure. Indeed, it is hard to imagine how the short form would even work to disclose both the original and subsequent fee structure. The short form generally requires disclosure of the highest fee that can apply if certain conditions are not met. But it would make no sense to disclose a monthly fee that does not apply to an employee getting wages on a payroll card or to a student getting financial aid on a college card. The consumer could be given two short forms before the card is issued, but that would be confusing and consumers would likely ignore the form that does not apply to them at the time and might never. For a student, it could be four, six or more years until the higher fee structure kicks in. The same is true for a payroll card.

The revised fee schedules should be sent in written form, even if the consumer opted in to electronic communications. Students often have campus-based email accounts that change after they are no longer a student. Even if the original email account is not closed – and emails sent there do not bounce – the student may stop using it. Consent to receiving communications electronically could have been made a condition of the account and the consumer had no real choice, even if she prefers written communications. Emails are more easily overlooked than a letter. A significant change in fees is important enough that a back-up mailed copy of the new disclosures should be provided. Mailing also has the benefit of informing the issuer if there is a problem with the address on file that needs to be updated.

IX. Dispute rights and error resolution

The proposed rules, like the existing payroll card rules, modify the Regulation E dispute rights and error resolution requirements to account for the fact that not all consumers will receive a periodic statement. Thus, the proposal adjusts the deadlines for consumers to raise disputes or errors and for issuers to respond. The proposal also permits dispute rights only for registered cards. In general, we support the proposal with a few modifications.

First, the deadline to dispute charges or raise errors is confusing and, indeed, deceptive. Instead, the CFPB should give consumers a flat 120 days from the transaction, regardless whether or when the consumer accessed account information.

³¹⁵ It probably makes most sense for the original short form disclosure to reflect only current status and for the long form to disclose both sets of fees.

Second, discussion in the proposal continues existing inconsistencies and ambiguities about the consumer's liability and the issuer's responsibility in the case of an untimely dispute. The rules should clarify that consumers may raise untimely disputes, up to one year from the transaction. However, the issuer would not be bound by the provisional rules for timely disputes and would not need to reimburse the consumer for unauthorized transactions that could have been prevented with timely notice.

Third, we support the proposal that cards purchased at retail be registered in order to exercise dispute rights and that registered, general-use gift cards be covered.

Finally, we urge the CFPB to retain the annual mailed error resolution notice for consumers who have not opted into electronic communications and have not accessed either a written or electronic history in the previous 12 months. The notice should also include information on how to access account information on either an ad hoc or periodic basis.

A. Deadlines should be simplified: at least 120 days

The proposed rule follows the current payroll card deadlines governing when a consumer must submit a dispute about a charge on the account. Those rules are extremely confusing. Consumers are told that, once an unauthorized charge or error appears in their account history, they have 60 days from the time that they either access their account electronically or are sent a written statement. But most consumers probably misunderstand this rule and think that they have 60 days from the date of the transaction.

Moreover, under the payroll card rule and the proposal, the deadline to dispute a charge can expire even if the consumer does not access an electronic or written history and *never* sees the error or unauthorized charge. The issuer can impose a 120 day deadline as long as the card issuer investigates all disputes made within 120 days.

But this 120 day policy is silent and deceptive. The issuer does not need to tell consumers about it. The model language for the account agreement terms can tell the consumer that they have 60 days from accessing a written or electronic history. The account agreement is thus misleading and deceptive on two counts. If the issuer follows the 120-day rule but the consumer sees the account history for the first time after 120 days, the deadline has run even though the account agreement says it has not. Consumers who have gotten a written statement or have logged onto the account (even if they never looked at the account history or saw the charge), are told that the time expired in 60 days even if the issuer has a silent policy of giving 120 days.

As discussed in Section VII.D above, the CFPB's own data show that prepaid cardholders rarely get written statements *or* access their account histories electronically. Consequently, the 60-day deadline disclosed to consumers – 60 days from accessing their account history – is rarely relevant. For issuers who choose to rely on the 120 day deadline, that is the deadline that controls. But consumers do not know about it and are misled. The current rule is also extremely difficult to explain and educate consumers about.

Instead, the CFPB should amend the rule to provide prepaid cardholders 120 days from the time the charge is credited or debited to the consumer's account. A simple 120 day rule would be easier to publicize, understand, and comply with.

At a bare minimum, account agreements should be clear and issuers should not be allowed to have it both ways. They should have to choose and clearly disclose their policy: either 60 days from accessing an account history – even if that is several months later – or 120 days from the transaction. In that case, the CFPB should add a comment explaining that a dispute raised 10 months after the transaction, for example, is still timely if the consumer only first saw the charge within the previous 60 days.

We do not object to an outer limit of one year to raise a dispute, even though there is no such limit in the EFTA. Indeed, putting a final one year deadline would both cut off late disputes and make clear that disputes up to that deadline may still be timely. Issuers would then have an incentive to take measures to encourage consumers to see their account histories sooner, using whatever option works for the consumer – paper statements, electronic access, or a mobile app.

To the extent that the CFPB retains the current approach, with deadlines running from electronic or written access, we support proposed Comment 18(e)-2, which states that access through a mobile application is electronic access but a text message, alert or telephone call about the balance is not.

B. Harmonize credit, debit and prepaid card liability limits and dispute rights for lost or stolen cards.

We urge the CFPB to harmonize the Regulation E and Regulation Z liability limits and dispute rights in the case of a lost or stolen card. Regulation E subjects consumers to up to \$500 in liability if they fail to report a lost or stolen card within two business days of realizing that it is missing. Credit cardholders have no deadline and a \$50 liability cap.

The \$500 liability rule for debit cards is also misunderstood. Consumers think that they are unprotected if they take more than two business days to report a lost or stolen card. However, they cannot be held liable for more than \$50 even if the dispute is not timely if the charges were made in the first two days and could not have been prevented even with a timely dispute.³¹⁶ The \$500 limit also does not apply if the card was not lost or stolen and the consumer disputes unauthorized charges on her statement within 60 days (or 120 days for prepaid cards).³¹⁷ But in the wake of repeated data breaches, consumers mistakenly believe their debit card accounts are unprotected.

Most prepaid cards are covered by network dispute rules that follow the credit card rules. It would eliminate confusion, protect consumers, and give the public confidence in debit and prepaid cards if Regulation E followed the Regulation Z rule and industry practice and limited liability to \$50.

C. Clarify error resolution responsibilities for an untimely dispute of unauthorized charges.

The proposed rule retains the confusing and cryptic interaction between the consumer liability provisions of current § 1005.6 and the error resolution provisions of current § 1005.11 and proposed § 1005.18(e) in the event of an untimely dispute. The CFPB should add comments to make clear that a financial institution must follow the error resolution procedures if a charge is disputed as unauthorized, even if the dispute is tardy, but that the institution does not need to follow the provisional credit rule.

³¹⁶ Reg. E §E § 1105.6(b)(2).

³¹⁷ Reg. E §E § 1005.6(b)(3).

Like current Regulation E Comment 11(b)(2)-7, proposed Comment 18(e)-3 states that an institution “is not required to comply with the [error resolution] requirements of § 1005.11” if a notice of error is untimely. Yet the comment also says that if the “consumer’s assertion of an error involves an unauthorized EFT, however, the institution must comply with § 1005.6 ... before it may impose any liability on the consumer.” Section 1005.6 limits consumers’ liability for unauthorized charges even if the consumer is late in reporting a missing card or an unauthorized charge.³¹⁸

This comment makes no sense. An institution does not “impose” liability on a consumer. Rather, an unauthorized charge appears on the consumer’s statement, and the consumer then can challenge it and ask for it to be reversed. There is nothing that the institution can do “*before* it may impose any liability.” It makes no sense to say, on the one hand, that a financial institution cannot hold a consumer responsible for unauthorized charges, and on the other hand that the institution does not need to respond to or investigate a dispute, recredit the consumer’s account, or provide an explanation if it does not. Doing all three of those things are required in order to ensure that the consumer does not bear liability for an unauthorized charge.

The CFPB should make clear that the institution must follow the error resolution provisions of § 1005.11 even for untimely errors. However, it would be appropriate to relieve the institution of the 10 day deadline for investigating or providing a provisional credit. In addition, the institution could have 90 days to investigate, as in the case of new accounts, out-of-state transactions, and POS debit card transactions.³¹⁹ Otherwise, the institutions should follow the procedures set out in § 1005.11.

Clarifying this rule is especially important in light of growing internet frauds involving cramming and unwanted goods and services. Especially without receiving regular statements, consumers may not notice small charges or may assume that they agreed to them. Once a consumer realizes that she has been charged for unwanted monthly membership clubs or other scams, it may be only then that she sees that the charges go back several months. Consumers should have clear recourse in that situation.

In addition, the model clauses should be revised to inform consumers that they may report an unauthorized charge even if the dispute is untimely. The current model clauses say “We must allow you to report an error until 60 days after ...”³²⁰ This statement implies that the institution does *not* need to allow a consumer to report an error later than that date. That implication contradicts proposed Comment 18(e)-3, discussed above, which incorporate the rule that an institution cannot impose liability on a consumer for an unauthorized charge that could not have been prevented even with a timely dispute.

The model clauses could also be simplified if the CFPB adopts our suggestion for providing consumers a simple 120 days. Thus, the model clauses should say:

³¹⁸ The consumer liability provisions of § 1005.6 set up two different scenarios, one involving a lost debit card (or other access device) and one where the card was not lost or stolen but an unauthorized charge appears on the statement. In both cases, the consumer’s liability increases and is potentially unlimited if the consumer does not dispute a charge in a timely fashion. However, in both cases, even if the consumer delays, her liability is limited to \$50 (if a card was lost or stolen) or \$0 (if it was not) for early charges that could not have been prevented if the consumer had made a timely dispute. Reg. E § 1005.6(b)(2)(i), (3).

³¹⁹ Reg. E § 1005.11(c)(3)(ii).

³²⁰ Proposed A-5 Model Clauses for Government Agencies; Proposed A-7 Model Clauses for Financial Institutions Offering Prepaid Accounts.

In Case of Errors or Questions About Your Electronic Transfers telephone us at [telephone number] write us at [insert address] [or email us at [insert email address]] **as soon as you can**, if you think an unauthorized charge or other error has occurred in your [agency's name for program] account. ~~We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared.~~ You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address] [optional: Or by contacting your caseworker]. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

As long as you report the error within 120 days, we will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

If you report an unauthorized charge after 120 days but no later than one year after the transaction, or for errors involving new accounts ...

We also urge the CFPB to develop a more accessible, stand-alone form to advise consumers of their dispute rights. Even the language above is quite dense, and it is buried inside a long legal set of terms and conditions. With increasing concern about identity theft and internet fraud, more clear information about dispute rights would be extremely helpful.

D. Registration is appropriate, with dispute rights for prior transactions.

We support proposed § 1005.18(e)(3), which requires consumers to register their cards before they may exercise their dispute rights and to permit consumers, once registered, to dispute errors or unauthorized charges that occurred prior to registration. This proposal strikes a balance between protecting consumers and ensuring that fraudsters cannot act anonymously.

We agree that individuals who receive payroll, government benefit, student or other cards that are issued to specific, identified individuals should not need to register their cards before exercising dispute rights. However, the CFPB needs to make clear in the Commentary that this rule applies to a broader range of cards and not just payroll or government benefit cards. For example, the explanatory material states:

Thus, the Bureau expects that financial institutions providing prepaid accounts for purposes such as student financial aid disbursements or property or casualty insurance payments would likely not be able to avail themselves of the exclusion in § 1005.18(e)(3) because consumer identifying information is collected and consumers' identities verified by the financial institution, or a service provider or agent of the institution, prior to distribution of such prepaid accounts.³²¹

³²¹ 79 Fed. Reg. at 77185.

Yet Regulation E itself and the Commentary appear to apply the registration requirement to all but payroll and government benefit cards. Even if an issuer has some information about a consumer sufficient to issue a card, the issuer could contend that it has not “completed its collection of consumer identifying information and identity verification.” Proposed § 1005.18(e)(3). A comment should be added making clear that, if identifying information is collected prior to distribution of the access device, then the registration requirement for error resolution does not apply.

The CFPB should also codify its expectation that issuers will inform consumers who call with disputes about on unregistered cards about the registration requirement and will begin the registration process.³²² That should be a requirement, not just an expectation.

E. Clarify that no fees may be charged for exercising dispute rights or other legal rights.

Consumers have a right under the EFTA and Regulation E to exercise dispute rights if they believe there is an error in their account. Errors include:

- Unauthorized charges;
- Mistakes in a debit or credit to the account, including an erroneous fee;
- Items missing from the statement;
- Incorrect amounts dispensed from an ATM;
- The consumer's request for a debit or ATM card receipt, notice that a preauthorized transfer occurred, or additional information or clarification concerning a debit or a request to investigate whether another error has incurred.³²³

Raising questions about these issues is a legal right, even if the consumer only wants information or clarification.

Yet some prepaid cards charge \$25/hour “research” fees. The fee schedules generally do not disclose what types of “research” is covered. But one card apparently charged the fee “to resolve billing discrepancies.”³²⁴ Higher One charges fees for “research regarding transaction activity or history on your account. This may include statement balancing.”³²⁵

Some cards may waive the fee if the issuer acknowledges the error. But charging the fees inhibits consumers from exercising their legal right to ask about potential unauthorized charges and errors even if they turn out to be wrong. And just because the bank denies the error does not mean the bank is correct.

³²² 79 Fed. Reg. at 77185.

³²³ 12 C.F.R. § 1005.11(a)(1).

³²⁴ Jon Hilkevitch, “2 fees dropped, but CTA's Ventra still pricey,” Chicago Tribune (March 26, 2013), http://articles.chicagotribune.com/2013-03-26/news/c t-met-ventra-debit-deal-0326-20130326_1_new-ventra-fare-card-prepaid-debit-debit-card.

³²⁵ See, e.g., <https://untdebitcard.higheroneaccount.com/studentaccount/feeschedules.do>. The reference to statement balancing appears to be a relic from the days when banks helped consumers balance their checkbooks (and perhaps still do for some consumers). It seems unlikely that consumers who use prepaid cards are calling to ask with help balancing their checkbooks, unless the question is really about an incorrect charge.

The ability to raise questions is especially important for accounts that do not come with paper statements and for consumers who may not have computer access. Even for those with smartphones, a small mobile device is awkward for reviewing anything but the most recent transactions.

The recent waves of identity theft, cramming and fraudulent charges that can result from internet shopping make it all the more important for consumers to be able to ask about charges on their account that they do not recognize. But knowing if a charge is improper or legitimate can be difficult, as the cryptic descriptions of ACH and debit card transactions in periodic statements are often indecipherable. This is especially true now that services like PayPal and Square may either not provide an item description or take up some of the few characters to identify their own role in the transaction. Many scams focus on charging small fees month in and month out for bogus membership clubs or subscriptions.³²⁶ They prey on the fact that consumers may overlook those charges. Consumers who spot those fees may find out that they go back months.

Disputing ATM machine errors or unauthorized withdrawals can also result in a he-said she-said that can only be resolved with research to look at the videotape. Despite the EFTA rule that the burden is on the financial institution to show that a charge was authorized,³²⁷ banks may flip the presumption if a PIN was used.³²⁸ Yet mere use of a PIN does not show that the consumer authorized the transaction. Identity thieves are becoming more and more sophisticated about combining information acquired from several sources to enable them to change a consumer's PIN.³²⁹ Or, the PIN could have been stolen along with the card.

Fees should not be used to dissuade consumers from exercising rights that they have under the law or to penalize them for doing so. The CFPB should clarify that prepaid cards may not charge fees when consumers exercise their legal rights. In particular, financial institutions must comply with error resolution requirements and provide other information about the account without charging research or other fees.

F. Registered, general-purpose gift cards should carry protection from loss or theft.

As discussed below under Scope, we agree that cards should be both marketed *and* labeled as a gift card in order to be exempt from the definition of "prepaid card." In addition, general purpose gift cards should be protected from loss or theft and covered by error resolution rules even if they are both marketed and labeled as gift cards. Giving the consumer a mechanism to replace a lost or stolen card would benefit consumers. In addition, some consumers use gift cards not as gifts but for themselves as a vehicle to make online payments. Consumers do so because they believe that using a prepaid card is

³²⁶ FTC, "10 Ways to Avoid Fraud" ("Dishonest merchants bill you for monthly 'membership fees' and other goods or services without your authorization"), <http://www.consumer.ftc.gov/articles/0060-10-ways-avoid-fraud>.

³²⁷ 15 U.S.C. § 1693g(b).

³²⁸ Recently, our office was contacted by a lawyer attempting to help a Social Security recipient. While the elderly consumer was in an extended inpatient VA hospital stay in another city, his new Direct Express card was stolen from the mail and emptied by five charges in two hours: three at bars and two ATM withdrawals. He asked the bank to look at the videotape, but the fraud claim was denied with no explanation other than a "conflict" in the information. We have heard many similar stories.

³²⁹ See Crayton Harrison, "Anthem Hacked in 'Sophisticated' Attack on Customer Data," Bloomberg Business (Feb. 4, 2015), <http://www.bloomberg.com/news/articles/2015-02-05/anthem-hacked-in-sophisticated-attack-exposing-customer-data>.

safer than using a debit card online. But the prepaid account information is subject to identity theft and the cards are subject to scams and unauthorized charges. As long as the card is registered, consumers should be able to exercise the dispute rights that would be available for any network-branded card.

Covering registered, general-purpose gift cards under the error resolution rules will also prevent evasions. A mobile prepaid account could be designed to generate a code for each transaction that is used only once. The provider could argue that each code is a separate gift card, instead of the mobile device being a single device that is reusable multiple times. Providing error resolution obligations for general-use gift cards would narrow the incentives for this type of evasion and protect consumers who use such mobile products.

G. Provisional credit

We support the proposal to extend the provisional credit requirements to all prepaid cards as long as the consumer registers the card. We do not believe that this requirement should necessitate unduly harsh fraud screening requirements or preclude consumers from obtaining prepaid card accounts. We oppose any alternative suggestion that provisional credit might only be provided to consumers who receive direct deposits, accounts that have been open for 30 days, or accounts over a certain balance.³³⁰

However, we urge the CFPB to pay close attention to the fraud screening practices of prepaid card issuers to ensure that issuers are not using the “fraud” label too quickly. We have observed that some banks will characterize an account as “account abuse” even if it was closed merely because the consumer did not repay an overdraft.³³¹ The same could happen for consumers who do not repay provisional credits that are reversed. Some banks are also sloppy and label an account as “closed for fraud” when the consumer was the victim, not the perpetrator.³³² The CFPB should warn prepaid card issuers not to do the same.

H. Retain the annual paper error resolution notice for consumers who have not accessed statements or electronic history.

The proposal eliminates the current requirement for government benefits cards for an annual written (paper) notice to consumers of their dispute rights. The proposal makes the government benefits rule the same as the payroll card rule: the notice can be on the statements that consumers can access electronically.

We urge the CFPB to retain the annual written notice requirement and to extend it to all prepaid cards for one group of consumers: those who have not accessed *either* a written or electronic statement in the previous 12 months. Having the notice is meaningless if consumers do not see it. Understanding error resolution rights is especially important in light of the increasing number of data breaches. Retaining the annual notice in these circumstances would give issuers an incentive to encourage consumers to access electronic or written statements.

³³⁰ See 79 Fed. Reg. at 77183.

³³¹ NCLC, “Introduction to Account Screening Consumer Reporting Agencies” (October 2014), http://www.nclc.org/images/pdf/credit_reports/ib-cra-screening.pdf.

³³² *Id.*

Moreover, the annual notice should include additional information beyond error resolution rights. The notice should also:

- Inform consumers about their options for obtaining written and electronic transaction histories and encourage them to review their transactions regularly.
- Remind them that their statements contain a monthly and year-to-date summary of fees.
- Give consumers the right to request an annual history instead of a monthly one.

An annual reminder will protect consumers who have not obtained information recently and will encourage them to monitor their accounts.

X. Scope

A. A broad definition of “prepaid card” is appropriate.

We support the proposal to cover a broad range of prepaid cards and prepaid payment systems within the scope of Regulation E. The rules cover general use reloadable cards, payroll cards, student cards, public benefits cards, workers compensation cards and many other types of cards, stored value accounts, and mobile or online equivalents.

We support the decision to adapt the current payroll card regulation to cover all prepaid card, including payroll cards and government benefit cards. Having a single, uniform rule that applies to all prepaid cards will eliminate complexity and confusion and enable consumers to compare different types of cards that could be used to receive funds.³³³ Moreover, while payroll and government benefit cards are covered today under Regulation E, that has not prevented all problems, as discussed throughout these comments. The additional new requirements proposed in these rules will better protect those cards.

We support a broad definition of “prepaid card.” As payment systems evolve, it is especially important not to have a narrow definition that permits evasions. The definition appropriately covers mobile prepaid accounts and other emerging payment systems when they hold consumer funds, such as PayPal and person-to-person accounts. A plastic card or paper check is no longer necessary to access funds in an electronic account or to make payments.

We support proposed Comment 1005.2(b)(3)(i)-5, which extends protections to accounts that store funds before a destination is designated. Payment systems that hold funds that will be used at a later time for electronic fund transfers should be covered by Regulation E. While pass-through devices like Google Wallet need not be covered if they are not storing funds, consumers need basic fee disclosures and error protections when their funds are held in accounts with entities not currently covered by Regulation E. We also support the clarification in the same comment that pass-through vehicles that do not store funds are exempt from Regulation E only if they do not change the character if the protections that the funds receive.

We agree with Comment 1005.2(b)(3)(i)-6 that cards should not need to be reloadable in order to obtain protections. We also agree with proposed Regulation E § 1005.2(b)(3)(i)(B) that an account that is

³³³ However, we support the decision to retain § 1005.15 governing government benefit cards, while generally aligning the requirements with § 1005.18. Cards issued by government agencies may provide unique issues, and retaining the rule also enables the CFPB to provide specific reminders to government agencies about obligations that they have ignored, such as their duty to comply with the compulsory use ban.

usable for person-to-person transfers should be covered, regardless whether the funds are redeemable at merchants or ATMs.

Virtual currencies should not be outside the rule's protections if they are used for consumer purposes. The lack of consumer liability protection, dispute rights, and error resolution requirements in virtual currency systems is extremely troubling. Virtual currencies today are not typically used for consumer purposes. But if they are, consumers need protections.

B. Campus and other nonbank "bank accounts" should comply with prepaid card rules.

The proposed definition of "prepaid account" excludes bank accounts that are already covered by Regulation E.³³⁴ But some nonbanks offer "bank accounts" that have more in common with prepaid cards than they do with DDA accounts. This is particular true in the campus card market. These accounts should be protected by the prepaid card rules.

For example, Higher One offers accounts for students at Baker College,³³⁵ University of North Texas,³³⁶ and Mt. San Antonio College,³³⁷ among many others. These accounts purport to be an "internet-only checking account serviced by Higher One." They are designed and serviced by a nonbank. They are designed to be card-based. Students are provided an unsolicited card, either in the mail or through their student ID card. After they validate the card and activate the account, they are given only "3 complimentary starter checks." The accounts do not offer access to a bank branch or any physical location where a consumer could ask questions. There is a 3.5% fee for making a withdrawal using a bank teller and a \$2.50 fee for using any ATM other than one of the very few Higher One ATMs. For example, for students at the Baker College Flint campus, there are only two surcharge free ATMs in the entire city of Flint.³³⁸

Students are pushed into using these accounts through coercive and deceptive measures that inhibit them from receiving financial aid and other funds in bank accounts of their choosing. In July 2014, the Federal Reserve Board obtained a consent order and cease and desist order against Cole Taylor Bank involving the following deceptive practices by Higher One that misled students about the financial aid refund selection process and the Higher One OneAccount:

- The omission of material information about how students could get their financial aid refund without having to open a OneAccount;
- The omission of material information about the fees, features, and limitations of the OneAccount product, which may have made it more difficult for students to make fully informed decisions prior to selecting the method for financial aid refund disbursement;
- The omission of material information about the locations of ATMs where students could access their OneAccount without cost and the hours of availability of those ATMs; and

³³⁴ Proposed Reg. E § 1005.2(b)(3)(i).

³³⁵ See <https://bakeronecard.higheroneaccount.com> and <http://bakeronecard.com/info/oneaccountagreementsbybankpopup.jsp?bankID=3>.

³³⁶ See <https://untdebitcard.higheroneaccount.com/> and <https://untdebitcard.higheroneaccount.com/info/outoneaccountagreements.jsp>.

³³⁷ See <http://mtsaccard.com/info/oneaccountagreements.do> and <https://mtsaccard.higheroneaccount.com/>.

³³⁸ See <https://www.higheroneaccount.com/info/publicatmlocat.or.jsp?state=MI>.

- The prominent display of the school logo, which may have erroneously implied that the school endorsed the OneAccount product.³³⁹

Despite last year’s action against Higher One’s bank partner Cole Taylor Bank, Higher One – now using WEX Bank – continues to coerce students into using its account. In partnership with colleges and universities, Higher One has set up a system that delays student access to their funds unless they elect to use the Higher One account. The Higher One website emphasizes “same business day” access if the money is deposited to the Higher One account, but “2-3 business days” – with a graphic showing a complicated several step process -- if the money is deposited in the student’s own account.³⁴⁰

Same business day deposit to the OneAccount	Deposit to another account	Paper check via US mail
OneAccount		
University Releases Money	University Releases Money	University Releases Money
Money Available to Spend	Submit ACH Information to Higher One	Check Printed
Money Deposited into Account Same Day	Higher One Sends Money to Federal Reserve	Higher One Mails Check Within One Business Day
	Federal Reserve Sends Money to 3rd Party Bank	U.S. Postal Service Delivers Check
	Money Available to Spend	Receive Check in Mail
	2-3 Business Days	Check Cashed
		Money Available to Spend
5-7 Business Days		

Financial aid can easily be directly deposited to the student’s own account just as quickly as into a Higher One card account. Students could be encouraged to submit their bank account information to the school early, before funds arrive, to enable direct deposit immediately. The school does not need to set up a system where funds are passed through Higher One, setting up delays for students who use their own accounts. Funneling the money through Higher One only serves to push students into using an account they might not want.

Higher One is able to steer students into its account because it provides students an unsolicited access device – either by enabling functionality on the student ID or by mailing the student a card before the funds arrive. While Regulation E’s unsolicited issuance rules apply equally to DDA accounts and prepaid cards used for public benefits like student aid, unsolicited issuance is rarely a problem for DDA accounts. Consequently, as discussed in Section VI.I above, we urge additional rules for prepaid cards that are not solicited. Those rules should apply to Higher One DDA accounts. Indeed, the fact that the Higher One

³³⁹ Press Release, Federal Reserve Board (July 1, 2014), <http://www.federalreserve.gov/newsevents/press/enforcement/20140701b.htm>.

³⁴⁰ See <http://www.myonemoney.com/yourrefundchoices>.

accounts are based around an unsolicited card is precisely why they are more akin to prepaid cards than to a DDA account.

Higher One has also been subject to other enforcement actions involving unfair practices. In 2012, Higher One was forced to agree to a Consent Decree with the FDIC involving \$11 million in restitution to students. Higher One was charging student account holders multiple nonsufficient fund (NSF) fees from a single merchant transaction; allowing these accounts to remain in overdrawn status over long periods of time, thus allowing NSF fees to continue accruing; and collecting the fees from subsequent deposits to the students' accounts, typically funds for tuition and other college expenses.³⁴¹

Higher One responded by limiting NSF fees to three fees per transaction. But the Higher One cards continue to charge not just NSF fees but also overdraft fees (fees imposed when an item is paid, not rejected) and to offset those fees from deposits to student accounts. Using the term "Insufficient Funds Fee" for overdrawn items, the Higher One card charges \$29 for the first overdrawn ACH payment during the lifetime of the account and \$38 for each additional item.³⁴² Using a loophole in the Regulation E opt-in rules for overdraft fees, Higher One does not need to obtain the student's consent to pay those items.³⁴³ A separate "Unavailable Funds Fee" in the same amount is imposed for bounced ACH payments, with a total of up to three fees of either type per item. While the fees also apply to overdrawn or bounced checks, Higher One supplies students with only three checks initially and clearly expects students primarily to use the card or online bill payment.

If the Higher One account were subject to the proposed rules, the card would have to comply with the proposed rules for overdraft features. Instead of a hidden, unsolicited fee-based overdraft program, Higher One would have to offer an explicit overdraft line of credit covered by Regulation Z and based on ability to pay. Higher One would have to disclose the amount of the overdraft credit line and charge fees in the first year that are no more than 25% of that line. While Higher One could charge whatever interest rate it wished,³⁴⁴ the cost of the overdraft would be primarily priced based on the amount of the credit and the time it was outstanding, rather than flat fees that quickly add up to be disproportionate to the amount overdrawn. Students would also have a reasonable amount of time to repay the overdraft, rather than having it offset against the first incoming deposit.

Under the proposed rules for prepaid card credit features, Higher One also could not charge any "unavailable funds fee" (which is basically a denied transaction fee). The fee would be a penalty fee and would be prohibited because no dollar amount is associated with it.³⁴⁵ Under Higher One's current fee schedule, a student could pay up to \$114³⁴⁶ for a single item as small as \$5.01 that either bounces three times or bounces twice and is then paid. Under the proposed rules, the bounces would be free. The cost of the overdraft protection would vary depending on the interest rate and the size of the overdraft, but the cost would likely be far lower than \$114.

³⁴¹ Press Release, "FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices, FDIC (Aug. 8, 2012), <https://www.fdic.gov/news/news/press/2012/pr12092.html>.

³⁴² <https://untdebitcard.higheroneaccount.com/studentaccount/feeschedules.do>.

³⁴³ The opt-in requirement only applies to ATM and one-time debit card transactions. Reg. E § 1005.17(b)(1).

³⁴⁴ Because the accounts are bank accounts, Higher One would probably not be subject to state interest rate limits, as the banks could take advantage of interest rate exportation or parity laws.

³⁴⁵ Reg. Z § 1026.52(b)(2)(i)(B)(1).

³⁴⁶ The fee would be \$105 the first time, since the first fee in the lifetime of the account is \$29 instead of \$38.

Another reason to subject nonbank bank accounts to the more detailed prepaid card rules in Regulation E is that nonbank prepaid card program managers like Higher One are not currently subject to regular supervision for compliance with consumer protection laws the way banks are.³⁴⁷ While the Fed and the FDIC were able to bring enforcement actions through Higher One's partner banks, Higher One is not subject to the same direct scrutiny as banks that provide bank accounts.

The Higher One "bank" accounts are covered by the Regulation E error resolution and unauthorized charges protections. But they would also benefit from the additional rules provided in the current rulemaking for prepaid cards, including:

- Clear fee disclosures with the short and long form.
- Disclosure that the student does not have to use the account.
- Rules governing overdraft and other credit features.

Under the CFPB's proposal, Higher One will also not be subject to the modified Regulation E account information rules proposed for prepaid cards, even though Higher One *requires* students to consent to electronic communications, even if a student is more comfortable receiving paper statements and getting other communications in writing.³⁴⁸ It is important to remember that students are a diverse group in age and background. Not all own computers, smartphones or are internet- and mobile-savvy. Yet students will receive none of the Regulation E protections for prepaid cards that do not provide paper statements.

Like other card accounts that do not provide periodic written statements, nonbank student accounts should provide:

- Free statements upon request. Higher One charges \$5 after the first copy.
- Dispute deadlines that run from the time the consumer accesses the account history, not from the time a statement is delivered.
- Free access to balance information and customer service.

In addition, under the rule as proposed, it appears that neither Higher One nor its bank partners will be required to post fee schedules and account agreements on the CFPB's website or their own. Higher One's prepaid card competitors, however, will be required to post their agreements.

In order to correct these discrepancies, the definition of "prepaid account" should also include:

An account under paragraph (b)(1) of this section that is offered or serviced by a financial institution that is not a depository institution and that requires the account holder to consent to electronic communications.

This addition will ensure that all accounts that are effectively prepaid cards in all but name do not escape the important protections to be added in this rulemaking.

³⁴⁷ The CFPB could set up a supervision program for the larger prepaid card program managers but has given no indication that it intends to do so. It is unclear whether the CFPB intends to rely on supervision through the banks that typically issue prepaid cards or whether direct supervision of program managers will be coming in the future.

³⁴⁸ See, e.g., <http://bakeronecard.com/info/oneaccountagreementsbybankpopup.jsp?bankID=3;>
<https://untdebitcard.higheroneaccount.com/info/outoneaccountagreements.jsp> ;
<http://mtsaccard.com/info/oneaccountagreements.do> .

This nonbank bank account provision could also be limited to accounts that would be “credit cards” under the proposed rules and are offered pursuant to an agreement between an institution of higher education and a credit card issuer. The CARD Act has special provisions protecting college students and younger adults, including special ability-to-pay considerations, restrictions on marketing to students, and disclosures of marketing agreements between credit card issuers and schools.³⁴⁹ These CARD Act provisions are evidence of Congress’s heightened concern for the financial well-being of college students, and the recognition of their particular vulnerability. Protecting college students from unsolicited issuance, excessive fees, and other abuses by Higher One-type accounts is absolutely justified under these provisions of the CARD Act.

Finally, as discussed in Section VI.H above, the CFPB could require any unsolicited account, whether a prepaid account or a DDA account, to comply with the prepaid card rules.

C. All accounts accessed through unsolicited devices should comply with prepaid card rules.

The rules governing prepaid accounts should apply to all accounts that are provided to consumers through an unsolicited access device, even if that device accesses a DDA account. The only context we are aware of in which unsolicited DDA access devices are used is for campus cards. Expanding the prepaid rule to cover unsolicited DDA accounts would protect consumers and prevent evasions. It would help to ensure coverage of nonbank cards like the Higher One account that are prepaid in all but name. Payroll and other accounts could not evade the prepaid rules by restructuring themselves as DDA accounts. Including all unsolicited access devices would also extend protections to campus card programs like those run by banks, which have been the subject of problems similar to the nonbank programs.

If necessary, DDA accounts could be subject to only some of the prepaid card rules. For example, financial institutions should not be allowed to take advantage of the Regulation E modifications without complying with the E-Sign consent rules. But if consent to electronic communications is required for an account and is not a voluntary choice, then the protections that come along with the modifications should apply.

D. Prepaid cards used for needs-tested benefits.

1. Overview

Despite the broad definition of “prepaid account” in the CFPB’s proposal, the rules do not appear to cover prepaid cards used to distribute needs-tested government benefits such as Temporary Aid to Needy Families(TANF).³⁵⁰ While the CFPB has not discussed the rationale for excluding needs-tested prepaid cards, the Bureau is apparently of the belief that the cards are covered by the exemption in the

³⁴⁹ 15 U.S.C. §§ 1637(c)(8), 1650(f).

³⁵⁰ Although the CFPB has not added a new exemption to Regulation E, its discussion and proposed Commentary make clear that the Bureau interprets the existing exemption for EBT systems, 15 U.S.C. § 1693b(d)(2)(B), to include prepaid cards used for needs-tested benefits even if they are not EBT cards. See 79 Fed. Reg. at 77123.

EFTA for “electronic benefit transfer” (EBT) systems through which government agencies establish accounts to distribute needs-tested benefits.³⁵¹

However, prepaid cards are not EBT cards and the two types of cards are quite different. Prepaid cards did not exist in 1996 when Congress passed the EBT exemption. The CFPB has the authority to make clear that the EBT exemption is limited to its intended target: EBT cards.

Prepaid cards are more vulnerable to fraud and unauthorized charges than are EBT cards, and the extremely low-income users of these cards especially would benefit from the proposed protections. Neither the language of the EFTA nor the policy behind the EBT exemption supports a Regulation E exemption for the financial institutions that issue prepaid cards used to deliver cash-based means-tested benefits.³⁵² Indeed, the only two current providers of needs-tested prepaid cards comply with Regulation E and do not need the EBT exemption.

2. The EBT exemption is an exemption for state and local government agencies, not for financial institutions.

When the EFTA was enacted in 1974, the only type of consumer-related account that Congress imagined, and the only type covered by the EFTA, was the consumer’s own account at a financial institution. However, by the early 1990s, states and localities were beginning to develop EBT systems that did not involve an account in the name of the consumer.

In 1994, the Federal Reserve amended Regulation E to declare that EBT systems were within the scope of the EFTA, to be effective in 1997. At about the same time, Congress was developing legislation that would require states to move from costly paper-based systems of government transfer payments to more efficient electronic transfer systems.

State and local governments, which did not have the experience that banks did with Regulation E, reacted with consternation. Although the move from paper-based payments to electronic payments was expected to save money, state and local governments expressed dismay at the potential costs of complying with Regulation E’s liability provisions and of protecting consumers from lost or stolen funds or unauthorized charges.

Congresswoman Marge Roukema summarized the concerns at a 1996 hearing on the issue:

Several States have indicated that the liability provision of Reg E would subject States to indefinite liability and jeopardize EBT development because of the increased costs for the States in complying with the liability of Reg E. ... Some local governments have stated that the expense involved in complying with the liability provisions may cause them either to not implement EBT or to terminate the current EBT system. That is the heart of this controversy.³⁵³

One state commissioner testified:

³⁵¹ 15 U.S.C. § 1693b(d)(2).

³⁵² There is a separate statutory exemption from the EFTA for Supplemental Nutrition Assistance Program (SNAP) benefits (food stamps). 7 U.S.C. § 2016(h)(10).

³⁵³ Opening Statement of Rep. Marge Roukema, “Electronic Benefit Transfer Systems And Regulation E,” Hrg. of the House of Rep., Subcomm. on Fin’l Inst’s and Consumer Credit, Comm. on Banking and Fin’l Svcs. (June 19, 1996) (“House EBT Hrg.”).

Reg E mandates that the entity issuing cards, in this case, States and localities, but typically banks and other financial institutions, must replace all but \$50 of lost or stolen funds. This decision radically changes significantly current social service benefits policy by creating a new entitlement to lost or stolen benefits.... The preliminary results from the first several months of pilot tests of implementing Reg E in two States, including ours, also show that this expense—*not so far that we have seen on the benefit replacement side but the investigatory administrative side—in the fair hearing cost side has been very high*.... Many States have decided to delay EBT implementation or have not gained approval to move forward with their contract until it is clear that Congress and the President will approve an exception.³⁵⁴

A state comptroller emphasized the distinction between subjecting states and banks to the EFTA:

Many participants in EBT systems development, most notably the States, hold the position that Regulation E, *crafted for the private sector in 1976*, is inappropriate to government EBT in 1996.³⁵⁵

Ultimately, Congress passed a bill requiring states to provide food stamps by electronic delivery and encouraging states to develop electronic systems to deliver other types of benefits as well.³⁵⁶ The bill also exempted EBT systems from the EFTA.³⁵⁷ In addition to the EBT exemption within the EFTA, a parallel exemption was added to the Food Stamp Act.³⁵⁸ The Food Stamp Act contains its own provisions governing lost or stolen cards, error resolution and account records.³⁵⁹ There is no federal exemption outside of the EFTA for other types of needs-based benefits, such as TANF (which replaced AFDC).

As illustrated above, the exemption was crafted for state and local governments and was designed to address their particular needs. The exemption was not aimed at banks, which were already covered by the EFTA and had a well-developed infrastructure for handling errors, loss, theft, and unauthorized charges.

The EBT exemption does not cover needs-based benefits distributed by the federal government.³⁶⁰ For example, Supplemental Security Income, a needs-based disability and income security program distributed in part through the Direct Express® prepaid card, is covered by the EFTA and Regulation E. Thus, there is nothing inherent in needs-based benefits that demands an exemption from the EFTA.

³⁵⁴ Statement of William Waldman, Commissioner, NJ Dep't of Human Svcs., Representing the American Public Welfare Association, House EBT Hrg. (emphasis added). States may have felt compelled by the Due Process Clause to conduct fair hearings, which banks, which are not subject to the Fourteenth Amendment, do not provide when resolving liability issues under Regulation E.

³⁵⁵ Statement of William Kilmartin, Comptroller, State of Massachusetts, House EBT Hrg. (emphasis added).

³⁵⁶ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996); see generally National Consumer Law Center, Consumer Banking and Payments Law § 8.1.1 (4th ed. 2009 and Supp.).

³⁵⁷ 15 U.S.C. § 1693b(d)(2).

³⁵⁸ 7 U.S.C. § 2016(h)(10).

³⁵⁹ See NCLC, Consumer Banking and Payments Law § 8.7, 8.8 (9th ed. 2009 and Supp.).

³⁶⁰ The EBT exemption applies to a system “established under State or local law or administered by a State or local government.” 15 U.S.C. § 1693b(d)(2)(B).

3. EBT card systems and prepaid card systems have important differences

Although the term EBT often refers to the legal definition in the EFTA (and the needs-based benefits covered by that definition), the term has a second, more technological definition. The term “EBT card” often is used to refer to the specific form of card and of technology currently used to deliver most needs-tested benefits. EBT cards and EBT payment systems differ in many ways from the newer prepaid card platform developed several years later.³⁶¹

a) EBT Cards

Under an EBT system, a bank account is established by a government agency and is held in that agency’s name. The agency deposits benefits into that account, but the funds remain in the hands of the agency until the funds are spent. Until then, the government agency retains control over the funds, earns any interest generated, determines whether the funds allocated to a particular recipient expire if unused, and keeps those funds if they do expire.

The government agency or the bank produces an EBT card that is issued to the benefit recipient to access the funds. When a recipient uses an EBT card, funds are transferred through the automated clearinghouse (“ACH”), typically under the Quest Operating Rules. That is, at the end of the day, the funds to cover all of the day’s transactions are transferred from the government to the merchant (or to a bank, if the funds are accessed through an ATM) over the ACH system. Technologically, the transfer is no different from any other form of ACH transfer, such as an electronic bill payment from a consumer’s account to pay a bill.

Similarly, if the benefits recipient loses the card, the card is stolen, or there are unauthorized charges, the recipient must generally resolve the problem and seek any reimbursement from the government agency. It is up to the government agency to decide whether or under what circumstances the consumer will be reimbursed. The process for doing this and the rights recipients have in recovering unauthorized withdrawals vary by state. The government agency covers any losses that the recipient does not bear. EBT cards are not Visa- or MasterCard-branded do not carry any network “zero liability” coverage.

EBT cards are accepted only at limited locations, generally those that subscribe to the Quest rules or another network. The transactions travel over a different payment rail than credit or debit cards. That is why, at a supermarket for example, the consumer has the choice of selecting “EBT,” separate from “credit” or “debit,” at the register. Traditionally, only markets, check cashers and ATM machines have accepted EBT cards, but some pharmacies, clothing stores, salons and other locations now accept them. The cards typically carry the Quest logo or another EBT network logo, not a Visa or MasterCard logo, and are not accepted on nearly the same widespread basis.

Currently, EBT cards can only be used in person and require entry of a personal identification number (PIN). They cannot be used over the internet and do not carry bill-pay features, though it is possible that this capability may be added in the future.

³⁶¹ The following description is based on our understanding following several conversations with various experts. We believe it is accurate but would appreciate hearing about any inaccuracies.

b) Prepaid Cards

Prepaid cards operate on a different system than EBT cards. With a prepaid card, the government agency transfers the funds in a lump sum on a periodic schedule to the bank that issues the prepaid card. For example, if benefits are paid biweekly, then every two weeks the agency will transfer to the bank all of the benefits for the recipients entitled to payments.

The funds are held in a pooled account in the name of the prepaid card program manager, not the government agency, with subaccounts for the individual recipients. The government agency does not control the account or the distribution of the funds to recipients. After a purchase is made, the funds are transferred from the pooled account to the merchant (or to a bank, if funds are accessed through an ATM) over the ACH system.

The bank controls the funds and keeps any accrued interest and may collect inactivity fees if the recipient does not use the funds. Unused funds may not return to the benefits agency, though eventually they could escheat to the state if they have not been consumed by inactivity fees.

Only the bank, not the government agency, produces prepaid cards issued to the benefits recipient. Prepaid cards carry the brand of a network association, typically Visa or MasterCard, and funds are distributed across the applicable network. The cards are accepted anywhere Visa or MasterCard debit cards are accepted. They are covered by the Visa or MasterCard zero liability policies. Prepaid cards can be used for signature-based transactions but still require a personal identification number for ATM withdrawals and locations that do not accept credit cards.

On a prepaid card, the bank is responsible for resolving and assuming liability for loss, theft, error or unauthorized charges (subject of course to timely reporting by the consumer and absence of fraud). The government agency bears no responsibility for reimbursing the consumer for lost funds.

Virtually all government prepaid card programs follow Regulation E rules and regulations. Vendors who have been talking to states about switching from EBT cards to prepaid cards have been representing that the cards are fully Regulation E (payroll card rule) compliant.

Most benefits deposited onto prepaid cards are cash benefits with minimal or no restrictions on their use. EBT cards, on the other hand, are often restricted to particular food items.

Prepaid cards deliver so much revenue for banks that they typically offer to administer government benefits programs at no cost to state governments, and even on occasion to share that revenue with the state. Revenue comes from two primary sources: interchange fees on merchants and fees imposed on consumers.

Prepaid cards can come with a variety of fees, including ATM fees (in addition to surcharges), balance inquiry fees, inactivity fees, and sometimes PIN debit, declined transaction, teller withdrawal and other fees that are not typically charged on EBT cards.

4. The EBT exemption does not and should not cover prepaid cards issued by banks

The EBT exemption is found in the Regulations section of the EFTA:

§ 1693b. Regulations

(a) Prescription by the Bureau and the Board

(1) In general. Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this subchapter.

...

(d) Applicability [of the EFTA] to service providers other than certain financial institutions

(1) In general

If electronic fund transfer services are made available to consumers by a person *other than a financial institution holding a consumer's account*, the Bureau shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this subchapter are made applicable to such persons and services.

As the section heading and general provision of section (d) make clear, this section is aimed at the circumstances under which *government agencies* would be covered by the EFTA. Financial institutions were already covered.

This exemption is designed for EBT systems, which are systems “under which a government agency distributes needs-tested benefits by establishing accounts that may be accessed by recipients”³⁶² With prepaid cards, however, the government does not distribute the benefits or establish accounts. The bank that issues the prepaid card distributes the funds through an account and subaccounts that the bank or prepaid card program manager establishes.

In light of the legislative history of the EBT exemption and the differences between EBT and prepaid cards, the CFPB would be acting well within its statutory authority if interpreted the EBT exemption to apply only government agencies that issue EBT cards and not to banks that issue prepaid cards. Only EBT cards are systems “under which a government agency distributes needs-tested benefits by establishing accounts” Neither the rationale for nor language of the EBT exemption extends to prepaid cards.

It is consistent with both the policy behind the exemption and the statutory language for the CFPB to interpret the EBT exemption to cover only cards that operate on an EBT platform, a system under which the government agency itself directly manages the funds and handles loss and error resolution issues. This exemption would not extend to banks or program managers that operate cards on the prepaid card platform.

Even if the statutory language did not mandate this construction, the Bureau should use its exception authority to limit the scope of the EBT exemption. The EFTA provides that the CFPB may adopt “such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.”³⁶³

Coverage of prepaid cards that distribute needs-tested benefits is consistent with the purpose of the EFTA:

³⁶² 15 U.S.C. § 1693b(d)(2)(A)(i).

³⁶³ 15 U.S.C. § 1693b(c).

(b) Purposes. It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.³⁶⁴

Protecting recipients of needs-tested benefits, who need the same rights as other users of prepaid cards, fulfills the purpose of the EFTA.

5. Extending Regulation E to needs-based government benefits prepaid cards will not impose an impediment to adoption of such cards

Whatever cost concerns Regulation E posed in 1996 for state and local governments, those concerns are not an impediment today to extending Regulation E to prepaid cards issued by financial institutions for the purpose of paying needs-based benefits. Banks routinely comply voluntarily with Regulation E's payroll card rules for any prepaid card they issue, even though Regulation E does not presently apply to most prepaid cards.

Regulation E coverage for prepaid cards used to pay unemployment benefits has been no impediment to states' adoption of such cards.³⁶⁵ Forty states and the District of Columbia use such cards.³⁶⁶ There is no reason that needs-tested benefits should be treated any differently.

Even when they are distributing needs-based benefits, banks and program managers typically provide Regulation E protections on their prepaid cards. For example, Comerica Bank, which distributes the needs-tested Supplemental Security Income (SSI) payments through the Direct Express Card, provides Regulation E coverage by contract even though Regulation E does not directly apply.

Similarly, the Treasury Department's new rules mandating electronic payment of SSI require that *any* prepaid card that accepts the payments (whether the official Direct Express® card or a privately selected prepaid card) must provide Regulation E protections.³⁶⁷

Vendors who are soliciting state contracts to distribute needs-tested benefits, or discussing migration from the EBT platform to the prepaid card platform, represent that the prepaid cards will come with Regulation E protections. That is one of the benefits that states (and the advocates who advise them) are urged to consider.

Advocates and states rely on these representations in advising consumers who use needs-tested prepaid cards. In order for these representations not to be deceptive, it is essential that the cards be fully, legally protected by Regulation E and not merely the subject of vague voluntary assurances. Despite years of claims that all prepaid cards comply with Regulation E, we are hearing that those

³⁶⁴ 15 U.S.C. § 1693(b).

³⁶⁵ The EFTA explicitly covers employment-related programs, including unemployment benefits. See 15 U.S.C. § 1693b(d)(2)(A)(ii).

³⁶⁶ See NCLC Unemployment Prepaid Card Report, *supra*. The District of Columbia adopted unemployment prepaid cards in December 2011. See <http://does.dc.gov/does/cwp/view,a,1232,q,644297.asp>.

³⁶⁷ The cost concerns may have been overstated even in 1996. Despite the fact that EFT-99 also mandated the federal government to switch from check-based to electronic payment systems, the EBT was only extended to state and local governments, not to needs-based federal benefit programs.

representations may not always have been true and that some programs are scrambling to comply with the new Treasury rules.

Financial institutions are eager to switch states from EBT cards to prepaid cards because prepaid cards generate more revenue for banks. Banks earn interchange fees on prepaid cards, which is a welcome trade-off for Regulation E obligations.

Banks that would be otherwise subject to interchange fee caps are exempt when they issue prepaid cards for government benefits, including needs-tested benefits. Compliance with Regulation E should be a condition of that exemption. Interchange revenue can fund any losses from complying with the consumer liability and error resolution provisions.

The EFTA and Regulation E are familiar terrain for banks and program managers that issue prepaid cards. There is no need for an exemption when those cards are used for needs-tested benefits.

6. Recipients of needs-tested benefits paid on prepaid cards need Regulation E protection.

Consumers who receive needs-tested benefits are, by definition, the neediest of all consumers. TANF is provided to households that have little or no income, and the median benefit is only \$428 a month or a paltry \$5,136 per year for a family of three.³⁶⁸ Benefits are *below* 50 percent of the poverty line in *all* states and are below 30 percent of the poverty line in the majority of states.³⁶⁹ Other state-based programs such as general assistance tend to have even lower eligibility levels and lower payments. At these levels, even tiny fees have a big impact. To consumers living below the poverty line, every dollar is obviously critical. Every dollar that is lost, stolen or mistakenly taken out of that consumer's account is potentially a meal for the consumer and her family.

EBT cards do not come with the same protections that other cards receive under the EFTA. The SNAP regulations require only that the state assume liability for food stamp benefits taken after the recipient has reported the loss of the card.³⁷⁰ Recipients are not protected against liability for losses before the theft is report nor for unauthorized charges taken through skimming without using the physical card. There are no federal requirements for the protections for TANF or for state-based benefits. For all of these needs-based programs, the protections from loss, theft, unauthorized charges, and errors are up to the state. Many states do not have any statutes establishing the rights of these consumers. Typically, many states protect recipients from liability only for funds lost *after* the card is reported lost or stolen or unauthorized charges are reported. That is, if the thief wipes out the entire account before the recipient realizes the card is missing, the recipient can lose the entire amount in the account.

A legal services attorney in New York described the problem one recipient had:

In 2008 I represented a client whose benefits were being removed from his EBT card by unknown person(s). Someone who had knowledge of his personal information and card # was

³⁶⁸ Ife Floyd and Liz Schott, Center for Budget and Policy Priorities, "TANF Cash Benefits Have Fallen by More Than 20 Percent in Most States and Continue to Erode" (October 30, 2014), <http://www.cbpp.org/cms/?fa=view&id=4222>.

³⁶⁹ *Id.*

³⁷⁰ 7 C.F.R. § 274.12(f)(5)(iv).

able to go into the EBT system and change his PIN and access his pa/fs benefits without using the physical card, apparently by going to store(s) and keying in the card number and PIN. The client requested replacement benefits but was declined, and lost a hearing. We appealed in state court. The case was settled and his lost benefits were restored, but the State's position is that benefits taken from EBT accounts cannot be replaced until and unless the client reports the first occurrence and the welfare agency does not act to fix the situation as by putting a PIN lock on the account. If the agency doesn't act to protect the benefits after the initial report, subsequent losses can be restored, but still not the loss from the initial theft.

Recently, I saw that Unemployment Insurance Benefits recipients in NY State, victimized by identity theft, were getting stolen benefits replaced. I asked a NY state welfare agency official why that happened for UIB recipients but not EBT users. His response was that UIB recipients have Regulation E protection, EBT users do not.³⁷¹

A newspaper article described the hardship that an 81-year old Food Stamp recipient, sick and mourning the passing of his wife, faced when his card was compromised and benefits were stolen:

Food stamps and Supplemental Security Income barely cover Mr. Fishman's monthly expenses. When the thieves cleared out his monthly food stamp allowance of \$162 - by duping Mr. Fishman's son into giving him the account information over the phone - he was left to rely on others for food.

The next month, the thieves struck again....

Last summer, someone called Mr. Fishman's house, and said he had to confirm information about the benefit card Mr. Fishman used for food stamps. Mr. Fishman handed the phone to his son, Aleksander.

He thought it odd that the man was calling in the evening, but he and his son soon forgot about the call - until the day Mr. Fishman tried to use his food stamp card. He contacted the police, but somehow the thieves were able to clear out the account a second time.

When he read an article about food stamp theft in a Russian-American Jewish newspaper, Mr. Fishman contacted the Edith and Carl Marks Jewish Community House of Bensonhurst, a beneficiary agency of UJA-Federation of New York, one of the seven agencies supported by The New York Times Neediest Cases Fund. At the community house, he was given a cash grant of \$100 from the fund (and a hot lunch).³⁷²

While the substandard protections on EBT cards are already problematic, more robust protections against unauthorized charges are especially essential as needs-based programs move to prepaid cards:

- Prepaid cards are much more widely accepted – anywhere that accepts a Visa or MasterCard debit card – compared to EBT cards, which are typically only accepted at grocery stores and pharmacies. They will be used at more locations where they can be subject to identity theft and are more attractive targets.
- Prepaid cards are easily used without the physical card, such as over the internet or telephone. Thus, the card can be the subject of unauthorized charges without the consumer even knowing

³⁷¹ Email from Maryanne Joyce, Legal Services of New York City-Bronx to Lauren Saunders (Feb. 25, 2010) (on file with NCLC).

³⁷² Kareem Fahim, "The Neediest Cases: Mourning and Ailing, Then Robbed, Twice" (January 24, 2009), <http://www.nytimes.com/2009/01/24/nyregion/24neediest.html>.

that the card has been compromised. The state liability rules that apply to EBT cards are totally inadequate to protect users of network branded prepaid cards.

- Prepaid cards are functionally no different from debit or credit cards and are subject to the same scammers who steal identities from other Visa or MasterCard users. EBT cards are less a target of scammers.
- EBT cards require use of a personal identification number (PIN), whereas prepaid cards do not. Fraud is more common and easier to perpetrate with signature-based purchases.
- Without Regulation E protections, states are less likely to take up the prepaid card option. Some contractors are promising protections to states and rules must ensure that the promise is real.

Consumers who use prepaid cards need full Regulation E protection even if, or especially if, their cards are loaded with needs-tested benefits. The CFPB should provide that protection as part of the upcoming GPR rulemaking.

E. Health and flexible spending cards.

The CFPB has proposed to exempt health savings accounts, flexible spending accounts, medical savings accounts, and health reimbursement accounts from the definition of prepaid account (which we will refer collectively to as “health and flex accounts”).³⁷³ We oppose an exemption for health and flex account cards.

These cards are used over an extended period of time and can carry significant amounts of funds, up to several thousand dollars. Health and flex cards are one of the fastest growing segments of the prepaid card market.³⁷⁴ We are aware of no reason why the cards could not comply with or benefit from the proposed protections. Consumers who use these cards also need fraud protection, error resolution and dispute rights, free access to account information, and protection from predatory credit products (sometimes aimed at dental and other medical expenses), among other protections. Health and flex cards are subject to fraud or errors just like any other GPR card.

Consumers need account information for health and flex accounts just as with other GPR cards. Fee disclosures and protection from overdraft programs and abusive credit features could also be important. (As we discuss above in Section IV.H, some health card issuers have considered adding expensive credit features. We support covering such cards under Regulation Z as credit cards even if they are not covered by Regulation E.)

There is nothing in the specialized nature of these cards that dictates an exemption from Regulation E. Indeed, there may be even more need with health spending cards for the error resolution requirements, given how complicated health care billing has become with the intersection of insurance denials or partial payments, deductibles, co-payments and other bureaucratic complexities. Providers can accidentally double bill, or overcharge before an insurance payment comes in. A consumer should have the ability to invoke the error resolution process when she suspects a healthcare provider has billed the wrong amount, or the card issuer has erroneously processed a transaction. The Regulation E rules

³⁷³ Proposed § 1005.2(b)(3)(iii).

³⁷⁴ See Mercator Advisory Group, 11th Annual U.S. Prepaid Cards Market Forecasts, 2014–2017 (Nov. 4, 2014), <http://www.mercatoradvisorygroup.com/Reports/11th-Annual-U.S.-Prepaid-Cards-Market-Forecasts-2014%E2%80%932017/>.

should not pose a problem for health and flexible spending cards, and many if not most programs already comply.

The Bureau should also consider whether full Regulation E statement requirements should apply to health and other flexible spending programs. These accounts can be especially prone to errors that consumers may not realize, and paper statements may be a more appropriate default rule. Consumers are provided these cards without requesting them,³⁷⁵ may not use them or do so rarely, may not be monitoring their accounts, and may not suspect that the card has even been used without their authorization. Yet the cards are Visa or MasterCard branded and are subject to fraud and authorized charges like other prepaid cards (even if they are not so broadly useable). The CFPB should consider whether paper periodic statements are important to give a consumer proactive notice about transfers from these accounts unless the consumer has opted in to electronic statements following the E-Sign Act requirements.

F. Larger “gift” cards, and cards marketed or labeled as gift cards.

The CFPB is proposing to add § 1005.2(b)(3)(i)(C), which would provide that gift certificates or gift cards that are subject to the Regulation E gift card provisions³⁷⁶ are not “prepaid accounts” subject to the prepaid rules. The gift card rules generally limit inactivity fees and expiration dates, limits that are not imposed in the prepaid rules. However, the Bureau is proposing to subject one narrow category of gift card to both the gift card rules and the prepaid rules: a general-use prepaid card that is *either* marketed as a gift card or gift certificate *or* labeled as such, but not both.

We agree with the Bureau that evasions are possible if general-use prepaid cards could escape coverage under the prepaid rules simply by being marketed or labeled as a gift card. There is little or no difference beyond the label between such a card and one that can be used as a bank account substitute. Indeed, a card could be marketed as “give the gift of a bank account.” Simply using the word “gift” on a label in marketing -- or in fine print on a card -- should not deprive a card that has broader uses of important protections. Payday lenders in particular could put the word “gift” on their cards and then completely escape the vital rules keeping credit separate from prepaid accounts.

The proposal will ensure a clear distinction between gift cards and prepaid cards. It is simple enough for a true gift card to be both labeled and marketed as a gift card. But a card that functions like any other GPR card -- i.e., that is Visa- or MasterCard-branded or otherwise available for general use and is reloadable -- must be both labeled and marketed as a gift card in order to be outside the general GPR card protections.

We also urge the CFPB to apply the prepaid card rules to gift cards that can hold more than \$500. Any card or account that can hold a sizeable amount of money needs liability protection and error resolution protection. Covering larger cards will also prevent evasions.

³⁷⁵ At NCLC, for example, every employee who has signed up for a flexible spending account receives the prepaid card. Yet in light of the uncertainty about what payment is due for a doctor before insurance has been processed, and overlapping spousal benefit programs, some employees may not use the cards at all and instead submit claims manually.

³⁷⁶ The gift card rules cover a gift certificate as defined in § 1005.20(a)(1) and (b); a store gift card as defined in § 1005.20(a)(2) and (b); a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); and a general-use prepaid card as defined in § 1005.20(a)(3) and (b).

G. Accounts currently subject to Regulation E

The proposed definition of “prepaid account” is in some ways defined as a negative: It is an account “not otherwise an account under paragraph (b)(1) of this section ...”³⁷⁷ This negative appears to be designed to make clear that traditional bank accounts are not prepaid cards. Thus, bank accounts do not need to comply with the special prepaid card disclosures and other rules, nor can they take advantage of the special Regulation E modifications for prepaid cards. The exclusion for traditional banks accounts is not itself problematic,³⁷⁸ but ambiguities could result in evasions of the prepaid card.

The definition of what is an “account under paragraph (b)(1)”³⁷⁹ is not so clear. While it has been generally understood that prepaid cards are not covered under (b)(1), that conclusion is not compelled by the language. A (b)(1) account includes a checking, savings, “or other consumer asset account ... held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.”³⁸⁰ A prepaid card account could easily be an “asset account” that fits that definition. A “financial institution” does not even need to be a depository institution.³⁸¹

Thus, it is possible that a prepaid card provider could argue that it was already “an account under paragraph (b)(1)” and is excluded from the new rules. This is not a problem for payroll and government benefits cards, which are currently (b)(1) accounts but are explicitly included in the “prepaid account” definition. But there could be other ambiguities. For example, prepaid cards that accept direct deposits of federal benefits – and are required under Treasury rules to comply with Regulation E – could argue that they are (b)(1) accounts. Or, newer nontraditional prepaid payment systems that are built around a bank account base could claim (b)(1) status.

In order to prevent evasions, the CFPB should add that the term “prepaid account” includes:

a subaccount of a master account that is not in the name of or held for the benefit of the consumer, regardless whether the subaccount is an account under paragraph (b)(1).

A subaccount/master account structure is the main feature that differentiates prepaid cards from accounts that are considered (b)(1) accounts today. While a subaccount structure should not be required to bring an account within the scope of the term “prepaid account,” an account that uses a subaccount structure should not escape the prepaid rules by claiming it was already a (b)(1) account.

³⁷⁷ Proposed Reg. E § 1005.2(b)(3)(i).

³⁷⁸ However, as discussed above, campus card programs that style themselves as bank accounts should be covered by the prepaid card rules.

³⁷⁹ Reg. E § 1005.2(b)(1).

³⁸⁰ Reg. E § 1005.2(b)(1).

³⁸¹ Reg. E § 1005.2(i).

XI. Posting of fee schedules and account agreements on the CFPB's and issuers' websites.

A. Post all fee schedules, including those of payroll cards.

We support requiring prepaid card issuers to provide their terms and conditions and short- and long-form fee schedules to the CFPB for posting on a central CFPB website. We also support requiring issuers to post the same information on their own websites and to provide written copies to consumers upon request. These simple measures will have important benefits. Consumers will more easily be able to shop for cards and find their own fee schedules and agreements. Comparison websites will develop that can help consumers quickly find and compare cards. Researchers and consumer advocates will be able to compile information, spotlight positive trends, and put the floodlights on inappropriate practices. Employers, government agencies, nonprofits and other entities considering a prepaid card program will be able to see the various terms offered in the market. Competition and public scrutiny will lead to better prepaid cards.

We strongly support the proposal to require posting of all payroll card agreements and other cards offered to limited populations.³⁸² The payroll card market, in particular, is extremely secretive. Issuers and employers have refused our requests for their fee schedules. Payroll card issuers will not even provide us with fee schedules for public employers, and we have had to request those fee schedules through a time consuming and cumbersome process of submitting public records requests. Employees do not get to choose which payroll card they use. The sunshine of payroll card fee schedules would improve fees.

The impact of public scrutiny can be seen in the market for unemployment compensation prepaid cards. After NCLC began issuing reports on those cards, fees came down. Between the 2011 and 2013 reports, 18 states improved their unemployment prepaid cards by reducing fees for ATM withdrawals, balance inquiries, purchases, and other transactions.³⁸³ In 2013, 18 out of 42 state cards received a "thumbs up" and only 3 cards a "thumbs down." In 2011, 8 cards out of 40 merited a positive rating and 16 were negative.

But the research for those two reports was incredibly time consuming and difficult, even though these are public programs. We discovered that state websites even had inaccurate information at times, if they posted fee schedules at all. Reports such as ours will be easier will all of the agreements in one place and required to be accurate. Agencies researching the best also will not have to wait for a report; they can do their own research on the website.

While payroll card programs may have confidentiality clauses in their contracts with employers, those clauses do not bind employees. Once they begin issuing cards to thousands of workers, the fee schedules and agreements are not confidential. Thus, there is no legitimate purpose in keeping withholding that information from the public. But posting it in one place on the CFPB's website will create more competition and public exposure.

³⁸² The CFPB has various sources of authority for this requirement, including the broad EFTA purposes of providing consumer rights and promoting the informed use of electronic fund transfers and the general authority under the Dodd-Frank Act to promote competition and transparency.

³⁸³ See NCLC Unemployment Prepaid Card Report, *supra*, at 2.

It is also important that complete fee schedules and agreements be posted on issuer websites. Not everyone will think to look at the CFPB's website. A consumer considering a particular card by shopping on the web should find that information in the logical place.

Consumers also need to be able to access their own agreements. Most will not save their original copy. The agreement should be accessible on the website but we also agree that consumers should be entitled to a paper copy upon request.

B. When amended agreements must be submitted.

Proposed section 1005.19(b)(2) requires an issuer to submit new agreements to the CFPB only if the agreement has been substantively "amended." A change to the issuer's corporate name or name of the prepaid account is not presently considered substantive,³⁸⁴ but it should be. A change of name impacts whether a consumer or researcher would be able to find an agreement on the CFPB's website by searching under the new name.

C. Submissions by "issuers" and quarterly submissions.

Identifying cards associated with companies other than the issuer.

The proposed rule requires only the "issuer" of the card to submit the agreement. However the information gets to the CFPB, it is critical that the information on the CFPB's website be searchable not only by the name of the bank issuer but also by program manager, branding entity, employer, institution of higher education and other names that might be associated with the card. It is not clear from the proposal whether this will be the case. For example, someone searching to see whether ACE Cash Express has a prepaid card and to see that agreement should be able to search for that name and should not need to know to look for NetSpend cards. The same is true of a college or employer.

The CFPB's recent enforcement action against Continental Finance highlights the importance of being able to search for agreements along several different metrics.³⁸⁵ The CFPB took action against a fee-harvester credit card that misrepresented charges and hit consumers with excessive fees. However, the card was issued by a credit union.³⁸⁶ One would have to know and search for the name of the credit union in order to find the agreement in the CFPB's credit card database. Instead, it should be possible to search for the agreement using any name associated with the card.³⁸⁷

The CFPB has asked whether program managers that use the same agreement with multiple issuers should submit a separate agreement for each issuer.³⁸⁸ The Bureau asked the same question about payroll card programs that use the same agreement for multiple employers. The critical question is whether a person searching for a particular agreement would be able to find it. A single agreement could be submitted as long as it is labeled and searchable in such a way that multiple names were listed

³⁸⁴ 79 Fed. Reg. at 77192.

³⁸⁵ See CFPB, Press Release, "CFPB Orders Subprime Credit Card Company to Refund \$2.7 Million for Charging Illegal Credit Card Fees" (Feb. 4, 2015), <http://www.consumerfinance.gov/newsroom/cfpb-orders-subprime-credit-card-company-to-refund-2-7-million-for-charging-illegal-credit-card-fees/>.

³⁸⁶ See David Morrison, "Predatory Lender Met Compliance Standards: ICUL," Credit Union Times (Feb. 11, 2015), <http://www.cutimes.com/2015/02/11/predatory-lender-m-et-compliance-standards-icul>.

³⁸⁷ We understand that the CFPB is in the process of enhance its' credit card database, and we hope that this functionality will be possible for credit cards as well as prepaid cards.

³⁸⁸ 79 Fed. Reg. at 77193.

on it. Indeed, that might be preferable, as it would enable the public to see that the agreement is the same for several entities, without having to spend the time reviewing each one.

Programs no longer offered to the public. The proposed rules only require submission of agreements offered to the public. However, programs that still have a significant number of open accounts should also be required to continue submitting those agreements, along with a notation that the program is no longer offered. That will avoid confusion about active programs that would otherwise be absent from the database and enable comparisons between newer programs.

Machine readable text. We support the proposed requirement that agreements on the issuer's website be machine readable. We urge the CFPB to adopt the same requirement for information submitted to the CFPB's website. That will enable researchers and comparison websites to analyze information more easily.

D. De minimis exception

The proposal exempts issuers who have fewer than 3000 accounts.³⁸⁹ We do not believe that a de minimis exception is needed or a good idea. Small issuers can have some of the highest-fee cards and need public scrutiny. In addition, abusive problems start small. Submitting the fee schedule to the CFPB is not time consuming and will not be a burden to small issuers.

E. Product testing exception

The proposal exempts agreements that are being used for product testing and have fewer than 3000 accounts. We agree with the CFPB's suggestion that more limits are needed to prevent evasions.³⁹⁰ The product testing exemption should be limited to three months and it should not be available if substantially all of an employer's employees are enrolled in a payroll program.

F. Fee information

It is very important that the short and long forms be searchable on the CFPB's website separate from the full agreement. Many users of the database will not be interested in the lengthy terms and conditions and will only want to compare fee schedules. Some will want to compare the long forms, but many will only be interested in the short forms, which should include most of relevant fees. Users of the database should be able to separately pull up both long and short forms without having to scroll through or download long documents.

G. Agreements for credit features

The CFPB has expressed the expectation that issuers would submit for posting both the initial prepaid card agreement and any subsequent agreement for a credit feature.³⁹¹ The CFPB should codify that expectation in the rules, not simply hope that institutions will comply or remember what the explanatory materials say.

³⁸⁹ Proposed Reg. E § 1005.19(b)(4).

³⁹⁰ 79 Fed. Reg. at 77198.

³⁹¹ 79 Fed. Reg. at 77194.

In addition, both the CFPB's website and the issuer's website should be designed so that the public can find credit agreements separately. It should not be necessary to open up every prepaid card agreement and search to see whether it contains a credit feature.

The CFPB has declined to add a comment similar to the one in Regulation Z excluding ancillary agreements from posting requirements, such as agreements for debt cancellation, debt suspension, credit insurance or other optional products.³⁹² As the CFPB has explained, these products are not relevant in the prepaid card context. In addition, if such products are attached to a prepaid card, it would be important to include them in the database, as they could be used as a way of evading the rules governing credit features. If a prepaid card does have any of those features, it should be deemed a credit card, and the agreements for the ancillary products should be submitted and searchable like other credit agreements.

In general, we agree that it is unnecessary for the Bureau to adopt an exception to posting requirements for private label prepaid cards along the lines of the provisions governing private label credit cards.³⁹³ As the Bureau notes, the prepaid card equivalent of a private label credit card is a gift card, which would generally be outside the proposed rules.

However, we urge the CFPB to require posting of any gift cards that have credit features. As discussed in Section IV.H above, such cards should be considered to be "credit cards" subject to Regulation Z even if they are not covered by the prepaid card provisions of Regulation E. Such cards could also be used to evade the prepaid card rules. A general use reloadable card that is both labeled and marketed as a gift card could be used to evade the prepaid card rules. The CFPB should keep track of those agreements, make them available to the public, and adopt additional rules if necessary.

H. Consumer's access to their own agreements

We support the CFPB's proposal to require issuers to give consumers access to their own account agreements.³⁹⁴ Consumers rarely will retain long terms and conditions that are full of legalese, but they should have access to them if they need them. Consumers should also be able to obtain another copy of the short and long form disclosures governing their accounts if they need them. However, we urge the CFPB to tighten up the proposed rule in several respects.

Upon request even if posted. First, an issuer should be required to make the consumer's agreement available "even if" not "unless" the issuer posts it on the public portion of the website.³⁹⁵ Similarly, the issuer should be required to post the agreement on its website *and* to make the agreement available in paper form upon request, not one or the other.³⁹⁶ The issuer should not be relieved of the requirement to provide a paper copy just because the agreement is on either the public or private portion of its website. We do not believe that the CFPB intended this result, as proposed § 1005.19(d)(2)(vi) provides that the agreements must be provided "pursuant to paragraph (d)(1)(ii) of this section must be provided in paper form unless the consumer agrees to receive the agreement electronically." However, paragraph (d)(1)(ii), which allows the consumer to request the agreement, is not a requirement; the issuer must

³⁹² 79 Fed. Reg. at 77198.

³⁹³ 79 Fed. Reg. at 77194.

³⁹⁴ Proposed Reg. E § 1005.19(d).

³⁹⁵ Proposed Reg. E § 1005.19(d)(1).

³⁹⁶ *Id.*

“either” post the agreement to the website under paragraph (d)(1)(i) “or” provide the agreement on request under paragraph (d)(1)(ii).³⁹⁷ Providing consumers the right to request a paper copy would be consistent with proposed § 1005.19(e), which excludes the requirements of paragraph (d) from the exemption the CFPB is otherwise providing from the consent requirements of the E-Sign Act.

Moreover, we interpret proposed § 1005.19(d)(vi) to require an issuer to supply a paper copy of the agreement to a consumer upon request even if the consumer has previously provided a general consent to electronic communications. That is appropriate.

Posted even if available upon request. Conversely, the consumer should be able to obtain her own agreement online even if the issuer also supplies it upon request. The proposed rules would not impose that requirement.³⁹⁸ Consumers who manage their accounts online should have easy access to their account agreements. The agreement should be easily findable in a conspicuous place in the “my account” section of the website after the consumer logs in. Consumers should not have to navigate a complicated IVR menu and to wait for an agreement to be sent through the mail in order to refer to their agreement. At best, any relief from the posting requirement should be limited to small issuers.

Posted in “my account” section even if same as public agreement. In addition, either agreement or a link to the agreement should be posted on the password protected “my account” section of the issuer’s website even if the agreement is identical to the one currently offered to the public. Consumers who obtained their accounts in the past will not know that their agreements are the same as those currently offered. The “my account” area of the website is also where they will logically search for their agreements.

No fee for copy of agreement. As with requests for account histories, the CFPB should make clear that no fee may be charged for requesting a copy of one’s own agreement.

No de minimis exception. We agree with the Bureau that there should be no de minimis exceptions to the requirement to provide consumers a copy of their agreements, even if – or especially if – the agreement is no longer offered to public. All consumers need to have access to a legal document binding them.

XII. The CFPB should prohibit forced arbitration and class action bans.

The CFPB’s first study found that forced arbitration clauses and class action bans are rampant in prepaid card agreements.³⁹⁹ The second study confirmed what everyone knows: forced arbitration clauses deny consumers access to justice.⁴⁰⁰ Forced arbitration clauses are primarily used to prevent consumers from obtaining any resolution of their claims. When consumers do proceed to arbitration, they are pushed into a secretive, biased and lawless forum. Arbitrators have an incentive to rule for the company that is

³⁹⁷ *Id.*

³⁹⁸ 79 Fed. Reg. at 77201.

³⁹⁹ CFPB, “Arbitration Study Preliminary Results” at 12 (Dec. 12, 2013), http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf.

⁴⁰⁰ CFPB, Press Release, “CFPB Study Finds That Arbitration Agreements Limit Relief for Consumers,” <http://www.consumerfinance.gov/newsroom/cfpb-study-finds-that-arbitration-agreements-limit-relief-for-consumers/>.

in a position to bring them repeat business, not for the consumer. Arbitrators do not need to follow the facts or the law and their decisions are unreviewable. Forced arbitration clauses are not an alternative system of justice; they are a method of suppressing claims and denying access to justice altogether.

Arbitration clauses are increasingly paired with class action bans that prevent either the arbitrator or a court from ordering a company that engages in widespread violations to compensate all of its victims. Class action bans make it impossible to pursue small claims and keep millions of consumers in the dark about legal violations that injure them.

Now that the CFPB's studies are complete, it is time to act on the obvious solution. The CFPB should ban forced arbitration clauses and class action bans in prepaid card contracts and all consumer financial contracts.

XIII. Other Section-by-Section Comments

A. Regulation E

1. Repayment by preauthorized electronic fund transfer; right to revoke authorization - § 1005.10(e)

Coverage of prepaid card overdraft plans. We support the decision not to exempt overdraft credit on prepaid cards from the EFTA rule prohibiting creditors from requiring repayment by preauthorized fund transfer as a condition of credit.⁴⁰¹ As discussed above, overdraft protection is not needed on prepaid cards, and giving consumers control over how and when to repay credit will protect prepaid cards and given creditors incentives to consider ability to pay. The exemption from the compulsory use ban is not in the statute and should not apply to prepaid cards.

Coercive incentives. We urge the CFPB to clarify that lenders cannot use coercive incentives to obtain "consent" to preauthorized payments. As discussed in Section IV.A.3 above, some lenders conceal the right to repay by other methods in fine print or delay distributing funds if a consumer does not want to consent to preauthorized payments. Under Regulation E, a "creditor may offer a program with a reduced annual percentage rate or other *cost-related* incentive for an automatic repayment feature."⁴⁰² But a non-cost-related incentive, or anything more than a modest cost discount, should violate Regulation E.

Right to revoke authorization. The CFPB should also make clear that consumers have the right to revoke authorization of preauthorized payments. A right to revoke authorization is implicit in Regulation E today and explicit in NACHA rules, but more clarity would be helpful.⁴⁰³ Consistent with NACHA and Regulation E rules, disclosure of the right to revoke should be part of the authorization agreement, be readily identifiable, and have terms that are clear and readily understandable.⁴⁰⁴ Consumers should have the right to revoke authorization for repayment in writing, electronically or

⁴⁰¹ Proposed Reg. E § 1005.10(e)(1).

⁴⁰² Official Interpretation to Reg. E § 1005.10(e)(1)-1.

⁴⁰³ See Official Interpretation of Reg. E § 1005.10(c)-2; NCLC Consumer Banking and Payments Law §§ 5.3.7.1, 5.3.7.2.3, 5.8.4.2 (Supp. 2014).

⁴⁰⁴ See Official Interpretation of Reg. E § 1005.10(b)-6; NCLC Consumer Banking and Payments Law § 5.3.1.2 (Supp. 2014).

orally⁴⁰⁵ in any manner that provides the creditor with reasonable notice and opportunity to act.⁴⁰⁶ The process must be as simple and accessible as possible for consumers to exercise the right.⁴⁰⁷ Otherwise, creditors could obstruct the consumer's right to revoke authorization by placing huge hurdles, such as requiring a particular written form to be sent by mail to an obscure address. While such tactics likely violate Regulation E today,⁴⁰⁸ clearer rules would be helpful.

Credit lines drawn on through convenience checks. We support proposed Regulation E Comment 1005.10(e)(1)-3, which makes clear that the ban on compulsory use applies to any credit extended under a prepaid card line of credit, even if the consumer writes a check that accesses the plan.

2. "Financial institution" -- § 1005.18(a)

Proposed § 1005.18(a) imposes a duty to comply with the prepaid card rules on "financial institutions." Proposed Regulation E Comment 18(a)-2 states that employers and third-party service providers typically do not meet the definition of "financial institution" unless they hold a prepaid account or issue a card and agree to provide electronic fund transfer (EFT) services. This comment is generally not problematic, as the issuer or its agent will have the responsibility for ensuring compliance with the rules.

However, some of the provisions of Regulation E beyond the compulsory use provision should apply to employers, government agencies, institutions of higher education and others that use prepaid cards to distribute funds. Those entities should share responsibility with the financial institution to provide disclosures. It is often the employer, for example, not the issuing bank, that will first provide information about the prepaid card to the consumer. The CFPB should add a rule under the compulsory use provision requiring an entity that uses prepaid cards to distribute wages or government benefits (or any other funds covered under the compulsory use provision, as discussed in Section VI.G) to either provide the disclosures or to ensure that a financial institution will provide them. As discussed in Section VI.B, the rule should require that the disclosures be provided 30 days before the card is issued so that the consumer has time to consider whether to use the card. That responsibility should fall on the employer or other entity that is using the card to distribute funds.

⁴⁰⁵ Just as with the right to stop payment of a preauthorized electronic fund transfer, the institution could require that an oral request be followed up with a written confirmation. See Reg. E § 1005.10(c)(2).

⁴⁰⁶ This would be similar to the rules governing revocation of preauthorized ACH payments. The NACHA Operating Guidelines provide a model form for revoking authorization that "should be filled with a statement of the time and manner that notification must be given in order to provide company a reasonable opportunity to act on it (e.g., 'In writing by mail to 100 Main Street, Anytown, NY that is received at least three (3) days prior to the proposed effective date of the termination of authorization')." 2015 NACHA Operating Guidelines § VII, app. G at OG290.

⁴⁰⁷ *Murphy v. Law Offices of Howard Lee Schiff, P.C.*, 2014 WL 710959, at *3 (D. Mass. Feb. 26, 2014) ("If plaintiff attempted to orally cancel a payment within the applicable time period, he would have breached the terms of the payment plan, even though he was within his EFTA-conferred rights."); *Baldukas v. B & R Check Holders, Inc.*, 2012 WL 7681733 (D. Colo. Oct. 2, 2012), *adopted by* 2013 WL 950847 (D. Colo. Mar. 8, 2013).

⁴⁰⁸ Courts have found a violation of the EFTA's anti-waiver provision when an agreement permits a consumer to stop a preauthorized electronic fund transfer only by giving written notice or prohibits the consumer from revoking authorization for a preauthorized transfer altogether. *Murphy v. Law Offices of Howard Lee Schiff, P.C.*, 2014 WL 710959 (D. Mass. Feb. 26, 2014); *Baldukas v. B & R Check Holders, Inc.*, 2012 WL 7681733 (D. Colo. Oct. 2, 2012), *adopted by* 2013 WL 950847 (D. Colo. Mar. 8, 2013); *Cobb v. Monarch Finance Corp.*, 913 F. Supp. 1164 (N.D. Ill. 1995) (plaintiff stated claim under state unfair and deceptive practices statute that lender violated EFTA anti-waiver provision by falsely representing in account agreement that plaintiffs could not revoke their authorizations to have the payments transferred to the finance company's account).

Similarly, any entity that provides a consumer with an unsolicited access device should be responsible if the rules for unsolicited issuance are violated. It may be an employer or institution of higher education that provides the consumer with the access device, even though that entity will not provide EFT services. But the rules prohibiting unsolicited issuance apply only to “a financial institution.”⁴⁰⁹ As discussed in Section VI.H, those rules could be violated if the consumer is not given a choice of rejecting the device or if – under our proposal – the account to which the device is attached carries fees that should not be permitted in case of unsolicited issuance. The entity that provides the access device should also have responsibilities.

3. Different terms on cards with and without credit features - § 1005.18(g)

Proposed § 1005.18(g)(2) prohibits issuers from offering different terms to consumers who do not link a credit plan to their account, other than terms that relate to extension of credit, carrying credit balance, credit availability. We support this general rule, which is essential to prevent issuers from pushing consumers into accepting credit features. The proposed rule will also prevent creditors from disguising the cost of credit in higher fees for unrelated services.

However, Proposed Regulation E Comment 18(g)-2.i explains that an issuer may offer different terms on two separate card programs, one that has the potential for a credit link and one that does not. We are concerned about this rule and urge the CFPB to consider narrowing it. Issuers could steer consumers who want to activate a credit feature to an entirely different card that has additional fees or other features. In fact, that other card could be one that is not even offered to the general public, but only to consumers who have asked about or likely to opt in for a credit feature. Or, a “deluxe” card could have more functionality, but consumers could be led to believe that they must activate the credit feature on it.

Proposed Regulation E Comment 18(g)-2 contains a partial list of terms and conditions that cannot vary between consumers who do and do not link a credit product to their prepaid card. We support the items on the list. But we urge the CFPB to add load or transfer fees to the list. Those fees could be triggered by a transfer of credit to the card, but they could also be charged if funds from an outside source were loaded or transferred onto the card. An issuer should not be permitted to charge a higher or lower fee for loading funds if the consumer selects the credit feature.

We also urge the CFPB to adopt a similar rule in Regulation Z, prohibiting different credit terms based on whether a consumer does or does not link the credit account to a prepaid card. For example, a creditor who offers credit that can be directly deposited to either a particular prepaid card or any other account should not be allowed to offer a discount if the funds are loaded onto the prepaid card.

B. Regulation Z

1. “Open-end credit”-- § 1026.2(a)(2)

We support the proposal to treat supposedly “courtesy” overdrafts on prepaid cards (and also on debit cards) as open-end credit under a “plan,” even though the creditor retains discretion to deny the transaction.⁴¹⁰ The consumer is committed under the account agreement to repay the overdraft and the overdraft fee. As the CFPB succinctly explains, overdraft plans are automated and are little different

⁴⁰⁹ Reg. E § 1005.5(a), (b).

⁴¹⁰ Proposed Reg. Z Comment 2(a)(2)-2.ii, iii.

from credit agreements where the creditor retains discretion to decline a given credit extension. The occasional courtesy coverage of a bounced check is largely a relic of the past. “Courtesy” overdrafts are a fiction developed to permit regulatory arbitrage and to evade credit laws.

While we agree that it is appropriate to treat overdraft “protection” plans on prepaid cards as open-end credit, we urge the CFPB to reserve judgment in other contexts about whether a series of credit extensions constitute open-end credit or a series of closed-end loans. Even if there is a supposed “plan,” it may be spurious open-end credit if the “credit line” is small and the consumer typically exhausts it with each extension, pays a flat fee instead of a periodic rate for each extension, repays each extension in a balloon payment, does not reuse the replenished credit line except after a previous extension is repaid, or does not have a device to access the credit without further approval from or interaction with the lender.⁴¹¹

As discussed in Section IV.A.2 above, payday lenders are moving to supposedly open-end loans in order to evade state payday loan and usury laws and to take advantage of TILA’s weaker APR disclosures for open-end credit. The CFPB should not accelerate this trend by endorsing an overly broad definition of open-end credit.

For example, we agree that prepaid card fees are imposed on “an outstanding balance” – one component of the definition of an open-end plan – if there is no specific amount financed, as discussed in proposed Comment 2(a)(20)-4.ii. But in other contexts, a finance charge that is a flat fee fixed in advance could be one element that leads to a conclusion that an extension of credit is closed-end.

On the other hand, the CFPB should also be alert to the possibility that a creditor could evade the requirements of this rule by structuring credit as a series of closed-end loans rather than as an open-end line of credit. For example, the creditor could give the consumer the option of “applying” for individual closed-end loans simply by sending a text or going online, with “instant approval” and instant delivery of funds. If this service functioned essentially as an open-end line of credit, it should be subject to the proposed rules.⁴¹²

2. “Card issuer”-- § 1026.2(a)(7)

We support the proposed rule to consider a third party that offers an open-end credit plan accessed by a prepaid card to be an agent of the prepaid card issuer and thus a credit card issuer with responsibilities under Regulation Z.⁴¹³ This rule will avoid evasions by third party credit plans that are linked to prepaid cards.

As discussed above, prepaid cards have been used by payday lenders such as CheckSmart to deliver credit offered by a purportedly unrelated third party that might even have been an affiliate. The credit services organization (CSO) model of payday lending used in Texas and other states also demonstrates the dangers of viewing third parties as unrelated. Under the CSO model, the consumer must pay a huge fee to the CSO for brokering a loan from a purportedly separate “lender” that charges a modest interest

⁴¹¹ For a discussion of spurious open-end credit, see NCLC, Consumer Credit Regulation § 2.2.5.9; NCLC, Truth in Lending § 6.2.3.1.

⁴¹² The CFPB will need to be careful before setting policy about whether a particular arrangement is open- or closed-end credit. In general, the rules for closed-end credit are more protective of consumers than the rules for open-end credit. The proposed rules would be the main exception.

⁴¹³ Proposed Reg. Z Comment 2(a)(7)-1.

rate. The same bifurcations and convoluted structures can develop on prepaid cards if the creditors are not held responsible for credit features they create for prepaid cards.

3. “Charge card”-- § 1026.2(a)(15)

We support the proposal to require prepaid cards that are charge cards to comply with the regular credit card rules giving consumers 21 days from delivery of the statement to make a payment and preventing imposition of late fees if payments received in that time frame.⁴¹⁴ The fact that charge cards impose finance charges that are not reflected by a periodic rate is immaterial to the consumer, who still needs adequate time to repay the credit.

As discussed in Section XIII.B.3, however, we believe that more cards should be categorized as charge cards.

4. Periodic statements -- §§ 1026.7, 1026.8

a) *Written credit statements are important; prohibit paper statement fees and mandatory electronic communications.*

No exemption from written statement requirement. We support the decision not to give prepaid card lines of credit an exemption from the Regulation Z written statements requirement.⁴¹⁵ While the consumers in the CFPB’s prepaid card focus groups expressed little interest in paper statements, that finding should not be taken as applicable to credit card statements.⁴¹⁶ There is a fundamental difference between a deposit account statement and a credit card statement: the first is for information purposes only; the second triggers a responsibility on the consumer’s part to make a payment. The CFPB itself has noted the importance of periodic statements for prepaid cards that are credit cards or prepaid lines of credit.⁴¹⁷ While many prepaid card holders may have Internet access, not all do, and others may find electronic statements inconvenient or not as useful.

A study just released by the Post Office Inspector General found that consumers overwhelmingly prefer to receive paper bills, even if they typically pay them online.⁴¹⁸ A three-month analysis of customer records from a major East Coast utility found that 91% of customers elected to receive their bills by mail. Even among younger, supposedly digitally-savvy customers, an average of 89% of customers chose paper bills. “Research shows that consumers value the physical mail piece as a record-keeping tool and

⁴¹⁴ Proposed Reg. Z Comment 2(a)(15)-3.ii.

⁴¹⁵ 79 Fed. Reg. at 77232.

⁴¹⁶ We also question whether it is universally true for prepaid card statements. All of the participants in the CFPB’s focus groups had smartphones, but not all prepaid cardholders do. Low paper statement uptake may also be due to the fact that programs do not promote paper statements.

⁴¹⁷ In the Supplementary Information, the CFPB noted that its “proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), the offset prohibition in § 1026.12(d) and the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets.” 79 Fed. Reg. at 77233. Thus, meaningful periodic statements are part of the CFPB’s strategy to give consumer’s control over repayment of credit associated with their prepaid cards.

⁴¹⁸ Office of Inspector General, U.S. Post Office, “Will the Check Be in the Mail? An Examination of Paper and Electronic Transactional Mail” (Feb. 9, 2015), available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-15-006.pdf>.

reminder to pay.”⁴¹⁹ An earlier study also found that consumers were less likely to adopt paperless options for accounts where a payment is due upon receipt of the statement than for other types of accounts.⁴²⁰

Even if a consumer has set up automatic payments, a paper bill can still be important. It is a conspicuous notice of the amount that will be debited from the consumer’s account. The paper bill is a reminder that consumer needs to plan other payments and purchases accordingly.

No paper statement fees or mandatory consent to electronic communications. The CFPB should prohibit lenders from making consent to electronic communications a condition of a credit feature and from charging fees for providing paper periodic statements under Regulation Z. While this prohibition should apply to all credit cards and open-end credit, we are particularly concerned that prepaid cardholders whose cards are linked to credit will be coerced into accepting electronic communications even if paper would serve them better.

As discussed above in Section II.D, consent to electronic communications is being required today for consumers who wish to enroll in overdraft protection. Consumers who are desperate for liquidity will do what they need to do in order to get credit. But the ability to provide an email address does not mean that electronic communications are the best way to reach the consumer.

Consumers should not be required to accept electronic communications as a condition of credit. The CFPB should prohibit such clauses. The CFPB should also prohibit fees for Regulation Z paper statements, which can also be used to coerce consent to electronic communications.

Prepaid cardholders are particularly vulnerable to the use of fees to pressure them into consenting to electronic statements. Prepaid cardholders by and large have very low incomes and little disposable income, and any fees are a hardship for them. Moreover, unlike traditional credit cards, issuers of prepaid cards that are credit cards will already have systems set up to provide for the alternative methods of providing account information that proposed Regulation E §§ 1005.18(c)(1) and (2) permit them to use. Issuers will be heavily incentivized to get their customers to consent to electronic statements, because unlike credit card issuers, most of their customers might not get paper statements. One way to compel such consent is to charge significant fees for paper statements.

The CFPB’s own research shows that consumers who are provided electronic statements for prepaid cards rarely access them.⁴²¹ These consumers should have the right to have paper statements without a fee. Failure to receive the information could result in late fees, unanticipated debits from the prepaid account, and negative credit reporting. No consumer should be required to pay for a disclosure that is mandated under the Truth in Lending Act.

⁴¹⁹ *Id.* at 1.

⁴²⁰ Emmett Higdon, eBusiness & Channel Strategy Professionals, “Paperless Plight: Growing Resistance Outpaces Adoption Among US Bank Account Holders” at 2 (Nov. 1, 2010).

⁴²¹ Proposed Reg. Z Comment 8(a)-2.ii.

b) Identification of sales transactions

The CFPB has proposed treating as sale credit those credit transactions where a prepaid that that is a credit card (overdraft credit) is used to obtain goods or services.⁴²² Such transactions would be treated as sale credit and not as overdrafts, which would otherwise be nonsale credit. We support this treatment and agree it is more helpful to consumers when a transaction is identified by the seller's name and the location of the transaction.

For transactions that draw on a prepaid line of credit (push credit), we urge the CFPB to treat certain transactions as sale credit. These would be transactions where the extension of credit is made to fund a prepaid card; the consumer uses the funds contemporaneously to purchase a good or service at that time; and the extension of credit funds the purchase amount. This treatment is similar to proposed Comment 13(a)(3)-2.ii's treatment of whether an extension is covered for billing error purposes. In such cases, the extension of credit was made specifically to fund the purchase, and identification of the seller and location of the purchase would be helpful for the consumer.

c) Part credit/part prepaid transactions

The CFPB asks whether the Regulation Z statement should identify transactions that are partially funded by a prepaid account and partially by a credit account.⁴²³ We agree that it would be important to list the entire transaction practice on the credit statement – and also on the prepaid card statement – indicating that only part came from each account. Consumers who are trying to identify transactions will be confused if the amount on the statement does not match purchase.

5. Claims and defenses against merchants -- § 1026.12(c)

Overdraft credit. Proposed Regulation Z Comment 12(c)-5 clarifies that the consumer's right under § 1026.12(c) to raise claims and defenses that the consumer has against the merchant also applies when a consumer uses overdraft credit. We support this proposed comment and believe it will protect consumers by preserving their right to be free from a holder-in-due-course type rule for credit cards, which was Congress's intent in passing 15 U.S.C. § 1666i.

Partial transactions. Proposed Regulation Z Comment 12(c)-5 also clarifies that, for transactions that are partly funded by the prepaid account and partly funded by credit, only the amount funded by credit is entitled to the protections of § 1026.12(c) However, Regulation E does not have a provision allowing consumers to raise claims and defenses against the creditor, so the amount funded by the prepaid account will not have any such protections. We urge the CFPB to use its authority under Section 105 of TILA to extend the claim and defenses provision to the prepaid amount in order to avoid consumer confusion. It makes no sense to permit a claim or defense against only a partial amount of a purchase simply due to the anomaly of whether there were some funds drawn from the prepaid account.

Push credit to cover a purchase. Proposed Regulation Z Comment 12(c)(1)-1.i states that consumers cannot raise claims and defenses against merchants for if the consumer first transfers credit to a prepaid account and then makes a purchase using the prepaid card. However, we urge the CFPB to extend claims and defenses if the extension of credit and the purchase are contemporaneous, or nearly

⁴²² Proposed Reg. Z Comment 13(i)-4.

⁴²³ 79 Fed. Reg. at 77232.

contemporaneous, and the extension of credit matches the purchase amount. This treatment is similar to proposed Comment 13(a)(3)-2.ii's treatment of whether an extension is covered for billing error purposes. In such cases, the extension of credit was made specifically to fund the purchase, and covering the purchase under § 1026.12(c) is appropriate.

6. Security interests and automatic payments -- § 1026.12(d)

a) *The ban on mandatory offsets should apply to prepaid card lines of credit, including ones repaid by payroll deduction.*

The CFPB has rightfully recognized that one of the key problems with credit linked to prepaid card accounts (or frankly, linked to any asset account), is the ability of creditors to be paid immediately when new funds are deposited into the account. These creditors place themselves first in line to grab the consumer's often limited funds, before the consumer can use them to pay more critical bills, such as rent, food, and transportation expenses. This "super-priority" status is why such creditors often do not engage in a meaningful ability-to-pay analysis. They have the ability to collect, which is all they need, not assurance that the consumer has sufficient income to afford to pay necessities and the credit. Thus, the application of the rule against offsets in TILA, § 1666h and Reg. Z § 1026.12(d) is crucial for protecting prepaid card holders. We strongly support the CFPB's proposal to enforce that rule for prepaid card credit features.

We urge the CFPB to add a comment making clear that payroll deduction plans are covered by the ban on mandatory offsets and/or the Regulation E ban on compulsory use. An overdraft credit plan or a prepaid card line of credit is clearly considered a "credit card" under the proposal even if it is repaid by payroll deduction. The definitions do not turn on how the credit is repaid.⁴²⁴ The CFPB discusses payroll deduction plans in the proposal and clearly intends to cover them: The explanatory material discusses how payroll deduction plans are treated under the rule permitting automatic payment no more frequently than monthly.⁴²⁵

However, it would help to prevent any doubt that the proposed offset rules apply to payroll deduction plans. A creditor could argue that a payroll deduction is neither an offset "against funds of the cardholder held on deposit with the card issuer" under Regulation Z⁴²⁶ nor an electronic fund transfer that debits or credits a consumer's account within the scope of Regulation E.⁴²⁷

On the other hand, the prepaid account that accesses the credit plan is clearly an account within the scope of Regulation E, and the credit plan is within Regulation Z. Applying the rules against offset and compulsory use to this transparent evasion is clearly within the CFPB's authority to "provide for such adjustments and exceptions ... to prevent circumvention or evasion" of the provisions of the EFTA.⁴²⁸ It is also within the CFPB's authority to set the rules for the interaction of those two accounts. Workplace loans are becoming more common and they may well interact with payroll cards. The careful rules that the CFPB has set up to protect prepaid and payroll cards could be evaded if payroll deduction plans are not covered.

⁴²⁴ Proposed Reg. Z § 1026.2(a)(15)(i), (vii).

⁴²⁵ 79 Fed. Reg. at 77236.

⁴²⁶ Reg. Z § 1026.12(d)(1).

⁴²⁷ See Reg. E §§ 1005.2(k), 1005.3(b), 1005.10(e)(1).

⁴²⁸ 15 U.S.C. § 1693b(c). See also 15 U.S.C. § 1604(a) (comparable language of TILA).

b) Consumers should have a right to revoke offset payment plans.

Under existing Regulation Z, credit card issuers are permitted to obtain the consumer's written authorization to make automatic deductions from a deposit account to repay a credit card. The CFPB has proposed new § 1026.12(d)(3)(ii) and Comment 12(d)(3)-3 to govern application of this provision to prepaid cards that are credit cards or prepaid lines of credit. In particular, the CFPB has provided that such automatic deductions cannot occur more than once per month from a prepaid account.

We support the CFPB's proposal to prohibit automatic deductions from a prepaid account more than once per month. A monthly payment is the standard for mainstream forms of credit. A specific rule has not been necessary in the credit card context, as credit cards never take payments more than once a month. But prepaid card credit features have operated more like payday loans or worse, repaid as soon as a deposit hits the account. Consequently, to ensure that consumers have a reasonable time to use the credit and a reasonable time to pay, the 30-day rule is necessary.

However, we are still concerned that the use of written authorizations for automatic deductions can still be abused, in that the authorizations will not be truly "voluntary." As discussed below, it is too easy for a creditor to obtain the consumer's signature on a document to provide for such written authorization.

To protect consumers, we urge the CFPB to make clear that consumers have the right to revoke authorization for an offset payment plan under Regulation Z. A right to revoke would complement the stop payment and revocation rights that consumers have when creditors obtain consent to repayment by preauthorized electronic fund transfer under Regulation E.⁴²⁹ The Regulation Z ban on mandatory offsets and the Regulation E ban on mandatory electronic repayment are two sides of the same coin, both helping to maintain the sanctity of deposit accounts and both rest on a foundation of consumer choice and control. As discussed above for preauthorized electronic payments, consumers should be able to exercise the right to revoke offset authorization easily, in writing, electronically or orally.⁴³⁰

The CFPB should also remind creditors that the disclosures required to obtain consent to repayment by offset must be clear and conspicuous, like all Regulation Z disclosures.⁴³¹ As under Regulation E and NACHA rules, the disclosures, the authorization and the right to revoke for a Regulation Z offset plan should be readily identifiable with terms that are clear and readily understandable.⁴³²

The CFPB asks whether it should adopt rules to cover the situation where the consumer authorizes periodic deductions but there is not enough money to cover a payment when due. We believe the Bureau should adopt such rules to protect prepaid card holders in this situation, particularly by banning any fees for that situation as declined transaction fees, which are not permitted under Regulation Z.⁴³³ In the alternative, the CFPB could use its authority to establish "additional requirements" to provide for a "right to cure" period for the limited circumstance of prepaid consumers who have authorized automatic deductions to repay credit associated with their prepaid card. The CFPB could require the creditor to provide a limited time period, such as one week, to add funds to the prepaid card account before imposing a penalty fee could be imposed. Of course, any penalty fees would be subject to the

⁴²⁹ See Section XIII.A.1.

⁴³⁰ *Id.*

⁴³¹ Reg. Z § 1026.5(a)(1)(i).

⁴³² See Official Interpretation of Reg. E § 1005.10(c)-6.

⁴³³ Reg. Z § 1026.52(b)(2)(i)(B).

limitations of Reg. Z, § 1026.52(b), i.e., a safe harbor of \$27 (or 3% of the balance if a charge card), only one fee per violation, and the fee cannot exceed the amount of the payment or portion unpaid.

- c) *The CFPB should ban security interests or require they be established only using a separate account.*

In proposed Regulation Z Comment 12(d)(2)-1.iii, the CFPB establishes several specific requirements in order for a creditor to take a security interest in prepaid account funds. The Comment would require any security interest to be in a separate, signed document that refers to the specific account number of the prepaid card, the amount of funds being taken as a security interest, and the conditions for enforcing the security interest. However, in lieu of these requirements, the CFPB asks for comment on whether the Bureau should prohibit creditors from obtaining ANY security interest in prepaid accounts to prevent circumvention of the offset ban.

We would support and would urge the CFPB to ban any security interests in a prepaid account. Even with the proposed safeguards in place, it is too easy for a creditor to obtain the consumer's signature on a document in the "paper (or nowadays electronic) shuffle" of opening a prepaid account. Disclosures are a weak consumer protection tool, especially for low-income or credit-impaired consumers who might have limited financial literacy or even English-language ability. Desperate cash-strapped consumers will sign the documents that a creditor demands of them in order to access credit, even when the credit is harmful. Substantive protections are necessary to ensure that consumers are not compelled, either directly or out of ignorance or desperation, from signing away their rights.

If the CFPB is interested in permitting a truly secured credit card associated with a prepaid card, the Bureau could allow funds from a prepaid card that would be the security interest to be segregated into a different, separate account that is not a transaction account, such as a savings account. We would not object to a narrow exception for segregated accounts with funds to which the consumer does not have access until the security interest is relinquished. But the security interest should be limited to the initial deposit. The CFPB should not permit an unrestricted security interest in future deposits as currently permitted under Comment 12(d)(2)-2. This clarification would be necessary to protect consumers with prepaid cards that receive regular income streams, such as payroll or benefits cards.

Finally, the CFPB asks if it should engage in consumer testing and develop model disclosures and forms for prepaid card security interests based on the requirements in Comment 12(d)(2)-1.iii. We do not think such testing and development of model forms is necessary or helpful. The better course of action would be to ban or severely restrict security interests, and the development of model forms would just encourage such security interests.

7. **Application/solicitation disclosures**

- a) *Disclosures omitted for charge cards generally should be required for charge cards accessed through prepaid cards.*

Under § 1026.60(b), charge cards are exempted from some of the disclosures required for the mandatory table for applications fixed finance charges. Among other items, charge card disclosures need not include minimum or fixed finance charges under § 1026.60(b)(3), credit insurance/debt suspension products under § 1026.60(b)(13) or the available credit line for fee harvester cards under § 1026.60(b)(14).

It is likely that many credit cards accessed through prepaid cards will not carry a periodic rate and will be considered charge cards. However, unlike conventional charge cards like the classic American Express, prepaid card charge cards have a significant possibility of imposing fixed finance charges, having fees in excess of the 15% threshold for the fee-harvester disclosure, or offering credit insurance/debt suspension. Thus, we urge the CFPB to promulgate a special provision for charge cards accessed through prepaid cards to require disclosure of these items in the applications/solicitations table.

b) "Transaction fees"

Proposed Comment 60(b)(4)-3 explains that fees are transaction charges, whether they be a flat per transaction fee, flat fee per day, or one-time transfer fee. Thus, these fees will be required to be listed in the required table for application/solicitation disclosures if they will be imposed on prepaid card credit card account. We support this proposed comment.

Proposed Comment 60(b)(8)-4 explains that cash advance fees include ATM fees for obtaining cash that draws on credit. The comment provides examples of how to disclose such fees. For example, if there is a \$15 overdraft fee, a \$1 ATM fee and a \$1.50 out of network ATM fee, the cash advance fee that must be disclosed is \$16 for network and \$16.50 for out of network, with the breakout between the OD and ATM fee shown. We support this proposed comment as well, and agree that disclosing the total makes it more easily understood.

XIV. The CFPB Should Adopt an Anti-Evasion Rule.

The proposed rules reflect close attention to the possibility of evasions. The CFPB has included a number of provisions or discussions aimed at ensuring compliance with the rules. Throughout these comments, we have also suggested many other places where the rules could be tightened or clarified to avoid evasions. But it is impossible to fully anticipate the creativity of those who are determined to circumvent the rules. Specific provisions will never head off every possibility.

The CFPB should include an anti-evasion provision in these rules. Even if an issuer finds a crack that arguably permits conduct that is against the spirit of the rules, the CFPB should be able to rely on an anti-evasion rule to prohibit conduct that clearly is intended to avoid compliance.

XV. Conclusion

We appreciate the complexity of this undertaking. Prepaid cards are a product that appear simple but in fact have numerous complexities underneath. The number of issues, various ways in which prepaid accounts are used, different players involved, and developing technologies all pose daunting issues for the CFPB.

The proposed rules reflect careful, detailed thought about the prepaid card market. The rules will better protect consumers when they use the products on the market today, prevent harmful practices from emerging, and provide room for the right kind of innovation that serves consumers well.

Thank you for the opportunity to comment on the proposal. We hope that our comments will help the CFPB refine and strengthen what is already a very strong proposal.

Netspend Terms and Conditions



CARDHOLDER AGREEMENT

IMPORTANT- PLEASE READ CAREFULLY- SEE PAGE 16-19 FOR THE FEES ASSOCIATED WITH THE USE OF THIS CARD ACCOUNT

FOR QUESTIONS OR ASSISTANCE PLEASE CALL THE CUSTOMER SERVICE TELEPHONE NUMBER (1-86-NETSPEND/1-866-387-7363) PRINTED ON THE BACK OF YOUR NETSPEND VISA® PREPAID CARD.

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Three Purchase Fee Plan Options:	ACE Elite™ Pay-As-You-Go™ Plan*	ACE Elite™ Fee Advantage™ Plan	ACE Elite™ with Direct Deposit Fee Advantage Plan**
Monthly Plan Fee	None	\$9.95	\$5.00
Signature Purchase Transaction Fee***	\$1.00 each	Included in Plan	Included in Plan
PIN Purchase Transaction Fee***	\$2.00 each	Included in Plan	Included in Plan
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction

* This Purchase Fee Plan is automatically effective on your Card Account when you first obtain the Card. If you wish to change to another Purchase Fee Plan, just call 1-86-NETSPEND or visit www.AceEliteCard.com.

** Cardholder must receive \$500 in Direct Deposit(s) in one (1) calendar month to qualify for this optional Purchase Plan. Upon qualifying an eligible Cardholder who is on the Pay-As-You-Go Plan may call 1-86-NETSPEND or visit www.AceEliteCard.com to change to this Purchase Plan; a Cardholder already enrolled in the \$9.95 ACE Elite Fee Advantage Plan will be automatically changed to the ACE Elite with Direct Deposit Fee Advantage Plan on the Cardholder's next Fee Plan Fee assessment date.

*** During checkout, select "CREDIT" on the keypad to make a Signature Purchase or select "DEBIT" and enter your PIN to make a PIN Purchase.

Withdraw Cash (see our tip on how to avoid ATM fees below)	
Over the Counter Cash Withdrawal Fee at a financial institution (also referred to as the "OTC Fee")	\$2.50 per withdrawal. A Foreign Transaction Fee may also apply, if applicable. A fee may also be assessed by the financial institution and may vary from location to location.
Over the Counter Cash Withdrawal Fee at a NetSpend Reload Network location (also referred to as the "OTC Fee")	Fee may be assessed by reload location and vary from location to location. Service not available at all reload locations.
Domestic ATM Cash Withdrawal Fee	\$2.50 per withdrawal plus ATM Mover fees, if any.
International ATM Cash Withdrawal Fee	\$4.95 per withdrawal plus the Foreign Transaction Fee, and ATM Mover fees, if any.
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the cash withdrawal
ATM Transaction Decline Fee	\$1.00 each
Tip to avoid ATM fees: Select "DEBIT" and enter your PIN to get cash back when making purchases at many retailers, such as grocery stores.	

Add Money To Your Account:	
Direct Deposit Fee	No fee
Fee to add cash or check proceeds at a NetSpend/Reload/Network location	Fee may be assessed by reload location and may vary from location to location.
Bank Transfer Fee	Visit your online Account Center to learn how to transfer funds to your Card from another bank account using a bank debit card or account number. Fees are determined and may be charged to the transferor's bank account by the service provider or originating bank.
Account-to-Account Transfer Fee via website or text message	No fee; standard text message rates may apply.
Account-to-Account Transfer Fee via Customer Service agent	\$4.95 each

Manage Your Account:	
Balance Inquiry Fee	-None when using online Account Center -None when using Anytime Alerts text or email message; standard text message rates may apply -\$0.50 each when using a telephone automated service -\$0.50 each when speaking with a Customer Service agent -\$0.50 each via ATM, plus ATM owner fees, if any
Check Refund	\$5.95 each
Statement Mailing Fee	\$5.95 each
Additional Card Fee	\$3.95 each
Lost, Stolen or Damaged Card Replacement Fee	\$3.95 each
Account Maintenance Fee (also referred to as the Account Inactivity Fee)	\$5.95 per month (fee applies if Card Account has not had any activity, that is, no purchases, no cash withdrawals, no load transactions or no Balance Inquiry Fee for 90 days). If enrolled in the ACE Elite Fee Advantage Plan (FAP) or ACE Elite with Direct Deposit FAP and your Card Account has had no activity as described above, this fee applies instead of the FAP Fee.

Make Payments:	
Bill Payment Fee	In addition to the one or more most bill payment methods made available through third-party service providers, you can see a full range of options, including ACH Debit/Preauthorized Payment Transactions and the applicable fees in your online Account Center. Fees are determined and assessed by third-party service providers.
ACH Debit/Preauthorized Payment Transaction Decline Fee	\$1.00 for each such declined transaction.
Stop Payment Fee for ACH Debit/Preauthorized Payment Transactions	\$10.00 each

Optional Features:	
Custom Card Fee	\$4.95 per custom card, if available.
Overdraft Protection Service Fee (This optional service has Cardholder deactivation and eligibility requirements.)	\$15.00 per Overdraft occurrence (maximum of 3 fees per calendar month).

Refunds are at par. **This Cardholder Agreement is effective July 1, 2013.**

This Card is issued by MetaBank Member FDIC.

5501 S. Broadband Lane

Sioux Falls, SD 57108

1-866-387-7363

www.netspend.com

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CARDHOLDER AGREEMENT

IMPORTANT- PLEASE READ CAREFULLY

FOR QUESTIONS OR ASSISTANCE, PLEASE CALL THE CUSTOMER SERVICE TOLL-FREE NUMBER (1-86-NETSPEND/1-866-387-7363) PRINTED ON THE BACK OF YOUR NETSPEND® VISA® PREPAID CARD.

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INTRODUCTION

Terms and Conditions/Definitions for the NetSpend Visa Prepaid Card

This document constitutes the agreement (“**Agreement**”) outlining the terms and conditions under which the NetSpend Visa Prepaid Card and the NetSpend Visa Virtual Account have been issued by MetaBank™. “**Card Account**” means the records we maintain to account for the transactions made with your Card or Virtual Account. “**Account Number**” means the 14-digit number used to identify your Card Account. “**Card**” means the NetSpend Visa Prepaid Card issued to you by MetaBank. “**Card Number**” is the 16-digit number embossed on your Card. “**Virtual Account**” means a temporary access device issued to you by MetaBank that you may elect to obtain to access your Card Account for telephone or online transactions, without needing to present your Card. “**Issuer,**” “**we,**” “**us,**” and “**our**” means MetaBank, of Sioux Falls, South Dakota, member FDIC. “**NetSpend**” refers to NetSpend Corporation, the servicer for the NetSpend Visa Prepaid Card program and NetSpend Visa Virtual Account program, and its successors, affiliates, or assignees. Any request for a Card or Virtual Account will be processed by NetSpend, acting on behalf of the Issuer, at its offices located in Austin, Texas. NetSpend is an Independent Sales Organization pursuant to an agreement with the Issuer. “**You,**” “**your,**” “**Cardholder,**” and “**Primary Cardholder,**” refers to the person who submits an initial request for the Card and is authorized to use the Card as provided for in this Agreement. “**Secondary Cardholder**” refers to the person or persons who have received the Card at the request of the Primary Cardholder and are authorized to use the Card as provided for in this Agreement. In order to become a Cardholder, you must be an individual who can lawfully enter into and form contracts under applicable law in the state in which you reside. Unless it would be inconsistent to do so, words and phrases used in this Agreement should be construed so that the singular includes the plural and the plural includes the singular.

You acknowledge and agree that the value available in your Card Account is limited to the funds that you have loaded into your Card Account or have been loaded into your Card Account on your behalf. By accepting and using your Card or Virtual Account, you agree to be bound by the terms and conditions contained in this Agreement. You and any Secondary Cardholder(s) agree to sign the back of each respective Card(s) immediately upon receipt.

The expiration date of your Card is identified on the front of the Card. The expiration date of any Virtual Account you have requested is described below in the section labeled “*Virtual Account.*” The Card is a prepaid card. The Card is not a gift card, nor is it intended to be used for gifting purposes. The Card is not a credit card. The Card is not for resale. You are the direct beneficiary of the funds loaded to your Card Account. The funds in your Card Account will be FDIC insured upon receipt by the Issuer, provided your Card is registered with us (for more information, see section labeled “*Activation/Registration*”). You will not receive any interest on your funds in your Card Account. The Card will remain the property of the Issuer and must be surrendered upon

demand. The Card and Virtual Account are nontransferable and may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. The Card and Virtual Account are not designed for business use, and we may close your Card Account if we determine that it is being used for business purposes. We may refuse to process any transaction that we believe may violate the terms of this Agreement.

Your Card Account does not constitute a checking or savings account and is not connected in any way to any other account, except as described in the section labeled "*Virtual Account*" or as may otherwise be indicated in any other account agreements you have entered into with us.

Write down your Card Number and the Customer Service phone number provided in this Agreement on a separate piece of paper in case your Card is lost, stolen, or destroyed. Keep the paper in a safe place. Please read this Agreement carefully and keep it for future reference.

OPENING A CARD ACCOUNT (IDENTIFICATION VERIFICATION)

The USA PATRIOT Act is a federal law that requires all financial institutions to obtain, verify, and record information that identifies each person who opens a Card Account.

What this means for you: When you open a Card Account, we will ask for your name, street address, date of birth, and other information that will allow us to reasonably identify you. We may also ask to see your driver's license or other identifying documents at any time. The same identification verification requirements apply to each Secondary Cardholder, if any are designated by you.

BUSINESS DAYS

Our business days are Monday through Friday, excluding federal holidays, even if we are open. Any references to "days" found in this Agreement are calendar days unless indicated otherwise.

ADDRESS OR NAME CHANGES

You are responsible for notifying us of any change in your physical address, mailing address, e-mail address, text message address, or your name, no later than two (2) weeks after said change. Any notice of change of address or name required by this Agreement may be provided to us via e-mail at customerservice@netspend.com, by telephone at **1-86-NETSPEND/1-866-387-7363**, or by mail to: NetSpend, P.O. Box 2136, Austin, TX 78768-2136.

We will attempt to communicate with you only by use of the most recent contact information you have provided to us. You agree that any notice or communication sent

to you at an address noted in our records shall be effective unless we have received an address change notice from you.

AUTHORIZED USERS

You are responsible for all authorized transactions initiated and fees incurred by use of your Card Account. If you permit another person to have access to your Card, Virtual Account, Card Number or Personal Identification Number (“**PIN**”), we will treat this as if you have authorized such use and you will be liable for all transactions and fees incurred by those persons. You must notify us to revoke permission for any person you previously authorized to use your Card, Virtual Account, Card Number or PIN. If you notify us to cancel another person’s use of your Card, Virtual Account, Card Number or PIN, we may close your Card Account and issue a new Card to you with a different number. You are wholly responsible for the use of the Card Account according to the terms and conditions of this Agreement.

SECONDARY CARDHOLDER

You may request an additional Card for a Secondary Cardholder. The maximum number of such additional Cards is two (2). You must notify us to revoke permission for any Secondary Cardholder you previously authorized to use the Card. If you notify us to revoke the Secondary Cardholder’s use of the Card, we may close your Card Account and issue a new Card to you with a different number. You remain liable for any and all use of any additional Card(s) you authorize.

ACTIVATION/REGISTRATION

Both the Primary Cardholder and Secondary Cardholder must activate and register a Card before it can be used. Your Card Account may not have full functionality (*e.g.*, no international transactions and no Account-to-Account transfers), nor will you be able to access Card Account funds exceeding the dollar value established by either federal regulations and/or the Issuer (the “**Excess Funds**”) or reload your Card Account until your Card has been successfully registered. You may activate and register your Card by calling **1-86-NETSPEND/1-866-387-7363** or by visiting www.netspend.com. You will need to provide personal information in order for us to verify your identity and the identity of any Secondary Cardholder. If we cannot successfully complete the activation/registration process, you will be entitled to receipt of any Excess Funds remaining in the Card Account by way of a Check Refund, for which the fee, disclosed in the section labeled, “*Fee Schedule*,” will be waived. We may, from time-to-time offer other no-cost methods through which Excess Funds can be made available to you.

PERSONAL IDENTIFICATION NUMBER

You will not receive a PIN with your Card Account. However, you will receive a PIN once you have registered your Card with your personal information. Only one (1) PIN will be issued for each Card Account. Your PIN can be used to obtain cash (see section labeled “*Cash Access*”) or to make purchases at any Point-of-Sale (“**POS**”) device that bears the Visa[®], Plus[®], or PULSE[®] acceptance mark. You should not write or keep your PIN with your Card. Never share your PIN with anyone. When entering your PIN, be sure it cannot be observed by others and do not enter your PIN into any terminal that appears to be modified or suspicious. If you believe that anyone has gained unauthorized access to your PIN, including a Secondary Cardholder, you should advise us immediately by following the procedures described in the section labeled “*Your Liability for Unauthorized Transfers*.”

To register your Card, see the section labeled “*Activation/Registration*.”

CASH ACCESS

With your PIN, you may use your Card to obtain cash from any Automated Teller Machine (“**ATM**”) or any POS device, as permissible by a Merchant, bearing the Visa[®], Plus[®], or PULSE[®] acceptance mark. ATM transactions are treated as cash withdrawal transactions. Any cash withdrawn from an ATM terminal, POS device or through a participating bank or NetSpend Reload Network location (an “**Over the Counter Cash Withdrawal**”) will be subject to the limitations set forth in the section below labeled “*Using Your Card and Virtual Account/Limitations*”). ATM withdrawals may also be subject to varying daily limits at the ATM owner’s discretion. A fee may be associated with the use of your Card to obtain cash. For information about the fee, see the section labeled “*Fee Schedule*.”

LOADING YOUR CARD ACCOUNT

You may add funds to your Card Account, called “**value loading**,” at any time. Your initial value load must be at least \$10.00. The minimum dollar value of any subsequent value loads will be subject to the terms established by the individual reload location (see (a) in the following paragraph). There is no limit on the number of times you may value load your Card Account in a day, but the maximum cumulative amount of value loads is currently \$7,500.00 over any 24-hour period. The calculation of this maximum amount will take into consideration all similar transactions made with any other Card Account(s) you may have with us, whether you are a Primary Cardholder or a Secondary Cardholder.

You may value load your Card Account: (a) using in-store cash value load transactions conducted through any member of the NetSpend Reload Network (see below in this section for more information about the network); (b) by arranging to have all or a portion of your paycheck, government benefits payment, tax refund check, or other electronic funds transfer direct deposited to your Card Account using the Automated Clearing House (“ACH”) system (“**Direct Deposit**” or “**ACH Deposit**”). In order to receive Direct Deposit value loads you must provide each of your payment providers with Issuer’s routing number and your assigned Account Number (see below for details about routing information); and (c) by arranging for the transfer of funds originating from: (i) a financial institution located in the United States; (ii) another Cardholder; and/or (iii) another Card Account. There may be fees associated with these methods of value loading. For information about the fees, see the section labeled “*Fee Schedule.*”

Personal checks, cashiers’ checks, and money orders sent to the Issuer are not acceptable forms of value loading. All checks and money orders sent to the Issuer for Card Account loading will be returned unless your Card Account has a negative balance at the time such check or money order is received, in which case the Issuer may in its discretion choose to apply the check or money order proceeds to the negative balance owed.

A NetSpend Reload Network Location Finder service is available by visiting www.loadnetspend.com; by enrolling in and using our Anytime Alerts™ short message service (*typically referred to as an “SMS” message*); or by calling **1-86-NETSPEND/1-866-387-7363**. There may be a fee associated with calling Customer Service. For information about the fee, see the section labeled “*Fee Schedule.*”

USING YOUR CARD AND VIRTUAL ACCOUNT/LIMITATIONS

Card Account Access: Subject to the limitations set forth in this Agreement, you may use your Card to (1) withdraw cash from your Card Account (see section labeled “*Cash Access*”); (2) load funds to your Card Account (see section labeled “*Loading Your Card Account*”); (3) transfer funds between your Card Accounts whenever you request; (4) transfer funds from your Card Account to another NetSpend cardholder account; (5) purchase or lease goods or services wherever Visa debit cards are accepted, and (6) pay bills directly from your Card Account in the amounts and on the days you request. Some of these services may not be available at all terminals. You may also use your Virtual Account to purchase or lease goods or services or make payments by telephone or online, without presenting your Card (see the section labeled “*Virtual Account*”). There may be fees associated with some of these transactions. For information about the fees, see the section labeled “*Fee Schedule.*”

Limitations on frequency of transfers: For security reasons, we may limit the amount or number of transactions you can make with your Card or Virtual Account.

Limitations on dollar amounts of transfers: (1) When using a registered Card, you may make a total of \$940.00 in ATM withdrawals during any 24-hour period. (2) No individual transfer made with your Card or Virtual Account may exceed \$4,999.00 (including cash withdrawals, purchases, value loads, bill payment and account-to-account transfers). (3) The maximum cumulative amount of value loads may not exceed \$7,500.00 over any 24-hour period. (4) The maximum value of your Card Account is restricted to \$15,000.00 at any point in time. We will determine any maximum values by aggregating the activity and value of all Card Accounts you may have with us, whether you are a Primary Cardholder or a Secondary Cardholder.

Each time you use your Card or Virtual Account, you authorize us to reduce the value available in your Card Account by the amount of the transaction and any applicable fees. You may not exceed the available amount in your Card Account through an individual transaction or a series of transactions – unless we decide, in our sole discretion, to approve such transaction(s) because you have qualified for (a) Purchase Cushion coverage or (b) the Overdraft Protection Service. If you do not qualify for either the Purchase Cushion or the Overdraft Protection Service (each defined in more detail below), and any transaction(s) exceeds the balance of the funds available in your Card Account, you shall remain fully liable to us for the amount of the transaction(s) and any applicable transaction fee(s). You agree to pay us promptly for the negative balance. If you have not added sufficient funds to your Card Account to cover the negative balance within sixty (60) days of its creation, **we will have the right to cancel your Card Account and pursue collection, including the right to collect funds, equal to or less than the negative balance, from any other Card Account(s) you may have with us.** In all instances described above, loads to your Card Account may be made via Direct Deposit or any of the other load methods described in this Agreement.

If you do not have enough funds available in your Card Account, you can instruct the Merchant to charge a part of the purchase to the Card and pay the remaining amount with cash or another card. These are called “split transactions.” Some Merchants do not allow cardholders to conduct split transactions. If you wish to conduct a split transaction and it is permitted by the Merchant, you must tell the Merchant to charge only the exact amount of funds available in your Card Account to the Card. You must then arrange to pay the difference using another payment method. Some Merchants may require payment for the remaining balance in cash. If you fail to inform the Merchant that you would like to complete a split transaction prior to swiping your Card, your Card is likely to be declined.

If you use your Card at an automated fuel dispenser (“pay at the pump”), the Merchant may preauthorize the transaction amount up to \$100.00 or more. If your Card is declined, even though you have sufficient funds available, you should pay for your purchase inside with the cashier. If you use your Card at a restaurant, a hotel, for a car rental purchase, or for similar purchases, the Merchant may preauthorize the

transaction amount for the purchase amount plus up to 20% more to ensure there are sufficient funds available to cover tips or incidental expenses incurred. Any preauthorized amount will result in the placement of a “hold” on your available funds until the Merchant sends us the final payment amount of your purchase. Once the final payment amount is received, the preauthorized amount on hold will be removed. If we do not receive the final payment amount, the preauthorized amount on hold will remain in place for thirty (30) days. During a hold period, you will not have access to the preauthorized amount.

If you use your Card Number without presenting your Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if you used the Card itself (see the section labeled “*Virtual Account*” for additional information about how to obtain and use a Virtual Account).

You may not use your Card Number or the Issuer’s routing number and your assigned Account Number in connection with the creation and/or negotiation of any financial instruments such as checks, which we have not authorized.

Your Card cannot be redeemed for cash. You may not use your Card or Virtual Account for online gambling or any illegal transaction.

You do not have the right to stop payment on any purchase or payment transaction originated by use of your Card or Virtual Account, except as otherwise permitted in this Agreement. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold (see the section labeled “*Returns and Refunds*,” in addition to previous information addressed in this section).

VIRTUAL ACCOUNT

To purchase or lease goods or services or make payments by telephone or online, without needing to provide your actual Card Number, you may request up to three (3) active Virtual Accounts. Each Virtual Account consists of a 16-digit account number, a 3-digit security code, and an expiration date.

Each Virtual Account expires one year from the last day of the calendar month during which the Virtual Account was created. For example, if a Virtual Account is created on February 24, 2011, its expiration date is February 29, 2012.

When you use your Virtual Account without presenting your Card, the legal effect will be the same as if you used the Card itself. You must first register your Card with us before you can request a Virtual Account (see the section labeled “*Activation/Registration*”).

HOW TO QUALIFY FOR AN UPGRADE TO A NETSPEND PREMIER CARD ACCOUNT

To qualify for an upgrade to a NetSpend Premier Card Account, your Card Account must receive a total of \$500.00 in Direct Deposit funds within one (1) calendar month. Once you have met the qualification requirement, your Card Account will be automatically upgraded to a NetSpend Premier Card Account and you will have access to special Card Account benefits.

NetSpend Premier Card Account benefits include a discounted optional purchase transaction fee plan (the “**NetSpend Premier FeeAdvantage Plan**” or “**NetSpend Premier FAP**”); a purchase buffer of up to \$10.00 (the “**Purchase Cushion**”); and access to the NetSpend National Savings Program (the “**Savings Account**”). For information about the NetSpend Premier FAP, see the section labeled “*Fee Schedule.*” For information about the Purchase Cushion, see the sectioned labeled “*Purchase Cushion and Optional Overdraft Protection.*” For information about how to open a Savings Account, visit www.netspend.com.

PURCHASE CUSHION AND OPTIONAL OVERDRAFT PROTECTION

The features of the Purchase Cushion and the optional Overdraft Protection Service are described below.

IMPORTANT - The Purchase Cushion and the Overdraft Protection Service are SEPARATE features. A Cardholder may NOT receive the benefits of the Purchase Cushion and the Overdraft Protection Service at the same time.

(A) How the Purchase Cushion Works:

The Purchase Cushion is a special feature available exclusively to Cardholders who have qualified for an upgrade to a NetSpend Premier Card Account. For information about how to qualify for an upgrade to a NetSpend Premier Card Account, please see the section above labeled “*How to Qualify for an Upgrade to a NetSpend Premier Card Account.*” As described above in the section labeled “*Using Your Card and Virtual Account/Limitations,*” you generally do not have the right to make transactions or incur fees in amounts exceeding the available balance of your Card Account. We reserve the right to deny any transaction if available funds in your Card Account are insufficient to cover any transaction, fees, or other charges.

However, as a non-contractual courtesy, and in our sole discretion, upon qualifying for an upgrade to the NetSpend Premier Card Account, we may from time-to-time approve purchase transactions that you request that create up to a \$10.00 negative balance in your Card Account. We refer to this feature as the Purchase Cushion. You will not be assessed any fees for Purchase Cushion coverage.

If you meet our eligibility requirements, we may authorize negative balances resulting from Personal Identification Number (“PIN”)-based and signature-based transactions initiated using your Card or Virtual Account. Bill pay transactions initiated through the PayAnyone bill pay service are not eligible for Purchase Cushion coverage, nor are ATM transactions or ACH debit transactions initiated using the Issuer’s routing number and your assigned Card Account number. You may receive only one (1) \$10.00 negative balance allowance at a time. Negative balances are approved at our discretion on a per transaction basis. It is important to keep track of the value in your Card Account because it will be your responsibility to determine if you have incurred a negative balance.

If you make a transaction that creates a negative balance in your Card Account, you agree that within thirty (30) days of its creation you will add sufficient funds to your Card Account to cover the negative balance so that your Card Account has a zero or positive balance, or that you will otherwise immediately pay such an amount to us in full upon demand. If after thirty (30) days you have not added sufficient funds to cover your negative balance, your Card Account will remain open to receive credits and loads, which will automatically be applied to your negative balance before they are available to you; however, you will not be able to make any transactions using your Card or Virtual Account until your Card Account has a positive balance, *i.e.*, sufficient funds to cover the negative balance. If you have not added sufficient funds to your Card Account to cover the negative balance within sixty (60) days of its creation, **we will have the right to cancel your Card Account and pursue collection, including the right to collect funds, equal to or less than the negative balance, from any other Card Account(s) you may have with us.** In all instances described above, loads to your Card Account may be made via Direct Deposit or any of the other load methods described in this Agreement.

Should you voluntarily discontinue use of your Card, you shall remain responsible for the negative balance in your Card Account and agree that any credits or loads made to your Card will be used to offset the value of the negative balance, if any.

You acknowledge that a negative balance in your Card Account does not constitute a contractual open end line of credit. If we permit a negative balance on one or more occasions, we do not thereby obligate ourselves to permit a negative balance on any future occasion, and we may refuse to pay a negative balance for you at any time, even though we may have previously paid negative balances up to the \$10.00 limit for you. We have no obligation to notify you before we approve or decline a transaction that would result in a negative balance in your Card Account. Items will be approved or declined in the order they are received.

(B) How the optional Overdraft Protection Service (the “Service”) Works:

You generally do not have the right to make transactions or incur fees in amounts exceeding the balance of your Card Account; however, as a non-contractual courtesy,

the Service is available on your Card Account if you elect to participate (*i.e.*, opt-in) and you have met each of the activation and eligibility requirements described below.

If you choose to participate in the Service, it is that program only that will provide coverage, at our discretion, for any negative balances. If you opt-out of the Service or your participation in the Service ends or is suspended for any reason, and you have continuously used and maintained your Card Account in accordance with the terms of this Agreement, the Purchase Cushion feature may be made available to you at our discretion.

a. Activation and Eligibility

To activate the Service on your Card Account you must take each of the following steps: (1) consent to the delivery of electronic communications and provide a valid email address so that we can contact you if you overdraw your Card Account (see the section labeled “*Delivery of Electronic Communications*” for a description of what giving your consent means); (2) review and accept the terms pertaining to the Service; (3) enroll in the Service (*i.e.*, opt-in); and (4) receive an ACH Deposit of at least \$200.00 to your Card Account every thirty (30) days. The Service will be activated on your Card Account thirty-six (36) days after you receive your first ACH Deposit of at least \$200.00 and you satisfy each of the steps described in this paragraph. ACH Deposits received prior to enrollment in the Service will be considered for the purpose of determining your eligibility for activation of the coverage. If you fail to receive an ACH Deposit of at least \$200.00 every thirty (30) days, or your Card Account has a negative balance for more than thirty (30) days, the Service will be immediately deactivated. Your Card Account will remain open to receive credits and loads that will automatically be applied to your negative balance before they are available to you. If the Service is deactivated, you must retake each of the steps described in this paragraph in order to reactivate coverage.

If your Card Account has a negative balance for more than thirty (30) days on three (3) separate occasions or on any one (1) occasion for more than sixty (60) days, the Service will be permanently deactivated. If your Card Account has a negative balance for more than sixty (60) days, we may also elect to close your Card Account at any time thereafter and retain the right to pursue collection of any amounts owed at our sole and absolute discretion.

We will send you email notifications whenever (a) a transaction results in a negative balance in your Card Account; (b) an Overdraft Protection Service Fee is assessed (if applicable) (see Section B, below, for details about the fee), and (c) the Service is activated or deactivated for your Card Account. If you delete your email address from our Cardholder records or withdraw your consent to receive electronic communications from us, the Service will be immediately deactivated. We cannot accept responsibility for any email messages not received by you, or for any delay in the receipt or delivery of any email notifications. If you make your email address available to any other

individual, you agree that you are responsible for any release of any Card Account information to such individual. It is your sole responsibility to ensure that the email address you provide to us is current and accurate. We are not responsible for loss of messages and other consequences if you do not provide an accurate and current email address.

b. Terms of Use

Your participation in the Service is subject to the terms of this Agreement and you may incur fees. The fees for the Service are described here, and in the section labeled "*Fee Schedule.*" The Overdraft Protection Service Fee (if applicable) is applied to certain transactions described below that result in a negative balance ("**Overdraft(s)**") and is in addition to any other fees ordinarily applicable to a transaction. **The Overdraft Protection Service Fee is \$15.00 for each transaction that overdraws your Card Account by more than \$10.00, up to a maximum of three (3) Overdraft Protection Service Fees per calendar month.** Multiple Overdraft Protection Service Fees may be charged if multiple overdraft transactions are approved on the same day. All transactions are processed in the order in which settlements are received, with the exception of multiple ACH debits received on the same day, which will be processed in order from smallest to largest.

If you are enrolled in the Service and meet our eligibility requirements, we may authorize and pay Overdrafts resulting from PIN- and signature-based purchase transactions initiated using your Card or Virtual Account, ATM withdrawals and ACH debit transactions that you initiate or authorize someone else to initiate. Bill pay transactions initiated through the PayAnyone bill pay service are not eligible for coverage. It is important to keep track of the value in your Card Account because it will be your responsibility to determine if you have overdrawn your Card Account balance, the day and time the Overdraft occurred, and the amount of any Overdraft that is approved.

Once your Card Account has an overdrawn balance greater than \$10.00, you will have twenty-four (24) hours to reload your Card Account with funds sufficient to bring your Card Account to a zero or positive balance without incurring any Overdraft Protection Service Fee(s) ("Grace Period**").** If you fail to bring your Card Account back to a zero or positive balance within 24 hours from the time of the first transaction causing an overdrawn balance greater than \$10.00, you will incur an Overdraft Protection Service Fee for each transaction approved after your Card Account balance was greater than \$10.00 overdrawn, subject to the limitations described here.

You will receive an email (and an SMS text message if you are enrolled in Anytime Alerts™) notifying you when an Overdraft occurs. We will tell you where and when the transaction occurred and its amount. If the Overdraft was the first transaction to cause an overdrawn balance greater than \$10.00, we will also tell you when the Grace Period ends for the purpose of avoiding payment of the Overdraft Protection Service Fee(s).

You agree that within thirty (30) days of any Overdraft occurrence on your Card Account you will add funds sufficient to bring your Card Account to a zero or positive balance, or that you will immediately pay such amount(s) to us in full upon demand. The Service is offered in our sole and absolute discretion as a non-contractual courtesy to you, and as such, we may elect to deactivate the Service for your Card Account at any time, refuse to authorize any transaction that exceeds your Card Account balance, modify eligibility or activation requirements, modify or change the Service Fee, limits, or any other aspect of the Service, and/or terminate the Service in its entirety at any time.

Once you have opted-in to the Service, you may opt-out at any time online or by calling **1-86-NETSPEND/1-866-387-7363** during normal Customer Service hours. To see the hours of operation, refer to the section labeled "*Customer Service.*" Should you choose to opt-out of the Service you remain responsible for any negative balance(s) in your Card Account and agree that any credits or loads made to your Card Account will be used to offset the value of the negative balance(s), if any.

You acknowledge that your participation in the Service and the settlement by us of any transactions exceeding your available Card Account balance does not constitute a contractual open-end line of credit. Our authorization or settlement of any transaction on one or more occasions does not obligate us to authorize or settle future transactions. We may refuse the authorization or settlement of any transaction for you at any time. We have no obligation to notify you before we approve or decline a transaction that would result in an Overdraft in your Card Account.

PREAUTHORIZED DEBITS AND CREDITS

Your assigned Account Number and the Issuer's bank routing number can be used for arranging both direct deposits and recurring payments to merchants, internet service or other utility providers ("**Merchants**"). You may also arrange for recurring payments to Merchants using your Card Number or the bill pay services made available through our third party service providers.

If you have arranged to have Direct Deposits made to your Card Account at least once every sixty (60) days from the same person or company, you can call us at **1-86-NETSPEND/1-866-387-7363** to find out whether or not the deposit has been made. There may be a fee associated with calling Customer Service. For information about the fee, see the section labeled "*Fee Schedule.*"

Right to Stop Payment and Procedure for Doing So:

To stop a recurring payment to a Merchant you have preauthorized to debit your Card Account, you must first contact the Merchant to request the recurring payment be cancelled. If you have arranged for recurring payments to a Merchant using the bill pay

services available through our third party service providers, you should first contact the applicable third party service provider to cancel the recurring payment.

If the Merchant or bill payment service provider with whom you have arranged recurring payments from your Card Account is unable or unwilling to stop your payment, you can call us at **1-86-NETSPEND/1-866-387-7363** or write us at: NetSpend, P.O. Box 2136, Austin, TX 78768-2136 to request a stop on such payment. We must receive your request at least three (3) business days before the payment is scheduled to be made. Such a stop payment request will cancel a single, *i.e.*, one (1), recurring payment. If you want to permanently stop all recurring payments to a specific Merchant then we require you to put your request in writing and get it to us within fourteen (14) days after you tell us you want to stop such payments. There is a fee associated with each stop payment order you give. For information about the fee, see the section labeled "*Fee Schedule.*"

Notice of Varying Amounts:

If the recurring payments you make might vary in amount, the person you are going to pay will tell you the payment date and the amount of the payment ten (10) days before each payment is scheduled to take place. *(You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)*

Liability for Failure to Stop Payment of Preauthorized Transfer:

If you order us to stop a preauthorized payment three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

FRAUDULENT OR CRIMINAL CARD ACCOUNT OR VIRTUAL ACCOUNT ACTIVITY

We reserve the right to block or cancel your Card Account or Virtual Account if, as a result of our policies and processes we detect what we reasonably believe to be fraudulent, suspicious or criminal activity or any activity that is inconsistent with this Agreement. We will incur no liability to you because of the unavailability of the funds that may be associated with your Card Account and/or Virtual Account.

RETURNS AND REFUNDS

If you are entitled to a refund for any reason for goods or services obtained with your Card or Virtual Account, you agree to accept credits to your Card Account for such

refunds and agree to the refund policy of that Merchant. If you have a problem with a purchase that you made with your Card or Virtual Account, or if you have a dispute with the Merchant, you must attempt to handle it directly with the Merchant. There may be a delay of up to five (5) days or more from the date the refund transaction occurs until the date the refund amount is credited to your Card Account.

CARD REPLACEMENT

If you need to replace your Card for any reason, please contact us at **1-86-NETSPEND/1-866-387-7363** to request a replacement Card. You will be required to provide personal information which may include your Card Number, full name, transaction history, and similar information to help us verify your identity. There is a fee for replacing your Card. For information about the fee, see the section labeled "*Fee Schedule*."

TRANSACTIONS MADE IN FOREIGN CURRENCIES AND/OR WITH MERCHANTS LOCATED IN FOREIGN COUNTRIES

- A. If you obtain funds or make a purchase in a currency other than the currency in which your Card Account was issued, the amount deducted from your funds will be converted by Visa U.S.A. Inc. ("**Visa**") into an amount in the currency of your Card Account. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate Visa itself receives or the government-mandated rate in effect for the applicable central processing date. This percentage amount is independent of any amount taken by the Issuer in accordance with this Agreement, and,
- B. If you obtain funds or make a purchase in a currency other than the currency in which your Card Account was issued, or conduct a transaction with a Merchant located outside the U.S., Puerto Rico, the U. S. Virgin Islands, Guam, or the Marianas Islands, the Issuer will deduct a 3.5% foreign transaction fee ("**Foreign Transaction Fee**") based on the amount of the transaction, in the currency of your Card Account. The Issuer will retain this fee as compensation for its services.

RECEIPTS

You should get a receipt at the time you make a transaction using your Card or Virtual Account. You agree to retain, verify, and reconcile your transactions and receipts. You can get a receipt at the time you make any transfer from your Card Account using one of our ATM terminals.

CARD ACCOUNT BALANCE/PERIODIC STATEMENTS

You are responsible for keeping track of the available balance of your Card Account. Merchants generally will not be able to determine your available balance. It's important to know your available balance before making any transaction. You may determine your available balance by accessing your Card Account online at www.netspend.com; by enrolling in the Anytime Alerts SMS service; or by calling **1-86-NETSPEND/1-866-387-7363** (there will be a fee for this call, see below). A sixty (60) day history of account transactions is available free of charge at www.netspend.com. Statements in electronic format will also be made available free of charge at www.netspend.com for each month in which a transaction occurs. You will not automatically receive paper statements. You have the right to obtain a sixty (60) day written history of account transactions by calling **1-86-NETSPEND/1-866-387-7363**, or by writing to us at NetSpend, P.O. Box 2136, Austin, TX 78768-2136. **There is a fee for obtaining a written history.** For information about each of the fees described in this section, see the section labeled "*Fee Schedule.*"

CONFIDENTIALITY

We may disclose information to third parties about your Card Account or the transactions you make:

- (1) Where it is necessary for completing transactions;
- (2) In order to verify the existence and condition of your Card or Virtual Account for a third party, such as a Merchant;
- (3) In order to comply with government agency or court orders, or other legal reporting requirements;
- (4) If you give us your written permission; or
- (5) To our employees, auditors, affiliates, service providers, or attorneys, as needed.

OUR LIABILITY FOR FAILURE TO COMPLETE TRANSACTIONS

If we do not properly complete a transaction to or from your Card Account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (1) If through no fault of ours, you do not have enough funds available in your Card Account to complete the transaction;
- (2) If a Merchant refuses to accept your Card or Virtual Account;
- (3) If an ATM where you are making a cash withdrawal does not have enough cash;
- (4) If an electronic terminal where you are making a transaction does not operate properly, and you knew about the problem when you initiated the transaction;
- (5) If access to your Card Account has been blocked after you reported your Card, Virtual Account or PIN lost or stolen;
- (6) If there is a hold or your funds are subject to legal process or other encumbrance restricting their use;
- (7) If we have reason to believe the requested transaction is unauthorized;
- (8) If circumstances beyond our control (such as fire, flood, or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken; or
- (9) Any other exception stated in our Agreement with you.

INFORMATION ABOUT YOUR RIGHT TO DISPUTE ERRORS

In case of errors or questions about your Card Account, telephone us at **1-86-NETSPEND/1-866-387-7363**, write to us at NetSpend, P.O. Box 2136, Austin, TX 78768-2136, or email us at customerservice@netspend.com as soon as you can, if you think an error has occurred in your Card Account. We must allow you to report an error until sixty (60) days after the earlier of the date you electronically access your Card Account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at **1-86-NETSPEND/1-866-387-7363** or writing to us at NetSpend, P.O. Box 2136, Austin, TX 78768-2136.

You will need to tell us:

1. Your name and Card Number.
2. Why you believe there is an error, and the dollar amount involved.
3. Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your Card Account within ten (10) business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your Card Account.

For errors involving new Card Accounts, POS transactions, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new Card Accounts, we may take up to twenty (20) business days to credit your Card Account for the amount you think is in error.

We will tell you the results within three (3) business days after completing the investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation. If you need more information about our error-resolution procedures, call us at **1-86-NETSPEND/1-866-387-7363** or visit netspend.com.

LOST OR STOLEN CARDS/UNAUTHORIZED TRANSFERS

If you believe your Card, Virtual Account or PIN has been lost or stolen, call **1-86-NETSPEND/1-866-387-7363** or write to: NetSpend, P.O. Box 2136, Austin, TX 78768-2136. You should also call the number or write to the address shown here if you believe an electronic fund transfer has been made using the information from your Card, Virtual Account or PIN without your permission.

Your Liability for Unauthorized Transfers

Contact us AT ONCE if you believe your Card, Virtual Account or PIN has been lost or stolen, or if you believe that an electronic funds transfer has been made without your permission. Telephoning us at **1-86-NETSPEND/1-866-387-7363** is the best way to minimize your possible losses. You could lose all the money in your Card Account.

Under Visa Rules, your liability for unauthorized Visa debit transactions on your Card Account is \$0.00 if you notify us within two (2) business days and you are not grossly negligent or fraudulent in the handling of your Card, PIN or Virtual Account. This reduced liability does not apply to PIN transactions not processed by Visa or ATM cash withdrawals.

If you notify us within two (2) business days after you learn of the loss or theft of your Card, Virtual Account or PIN, you can lose no more than \$50.00 if someone used your Card, Virtual Account or PIN without your permission. If you do NOT notify us within

two (2) business days after you learn of the loss or theft of your Card, Virtual Account or PIN and we can prove that we could have stopped someone from using your Card, Virtual Account or PIN without your permission if you had promptly notified us, you could lose as much as \$500.00. If your Card or PIN has been lost or stolen, we will deactivate your Card and issue you a new Card to keep losses down.

Also, if you become aware of and/or your electronic history shows transactions that you did not make, including those made by your Card or other means, notify us at once following the procedures stated in the section labeled "*Information About Your Right to Dispute Errors*" appearing above. If you do not tell us within 60 days of the earlier of the date you electronically access your account, if the unauthorized transaction could be viewed in your electronic history, or the date we sent the FIRST written history on which the unauthorized transfer appeared, you may not get back any money you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the money if you had notified us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods for a reasonable period.

MISCELLANEOUS

Your Card Account and your obligations under this Agreement may not be assigned. We may transfer our rights under this Agreement. Use of your Card or Virtual Account is subject to all applicable rules and customs of any clearinghouse or other network or association involved in transactions. We do not waive our rights by delaying or failing to exercise them at anytime. If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this Agreement shall not be affected. This Agreement will be governed by the laws of the State of South Dakota except to the extent governed by federal law.

AMENDMENT AND CANCELLATION

We may (a) amend or change the terms and conditions of this Agreement or (b) cancel or suspend your Card Account or this Agreement at any time without prior notice to you except as required by applicable law. You may cancel this Agreement by returning the Card (if applicable) to us. Your termination of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to termination.

In the event your Card Account is cancelled, closed, or terminated for any reason, so long as you used your Card Account in accordance with the terms of this Agreement, you may request the unused balance to be returned to you via a check to the mailing address we have in our records. Unless you are eligible for receipt of "Excess Funds," as described in the section labeled, "Activation/Registration," there is a fee for this service. For information about the fee, see the section labeled "*Fee Schedule*." **The Issuer reserves the right to refuse to return any unused balance amount less than \$1.00.**

We will comply with unclaimed property laws and appropriately engage in escheatment activities as required by state law.

DELIVERY OF ELECTRONIC COMMUNICATIONS

The following E-Sign Disclosure and Consent ("**Disclosure**") applies to any and all communications or disclosures that we are legally required to provide to you in writing in connection with your Card Account and any related products and services ("**Communications**"), to the extent you have consented to receiving such Communications electronically. If you have not consented and would like to receive Communications electronically from us, please visit us online at www.netspend.com. **If you wish to participate in the optional Overdraft Protection Service you must consent to receive Communications from us in electronic form throughout the entire duration of your participation in Overdraft Protection Service. If you withdraw your consent to receive Communications, your participation in Overdraft Protection Service will be immediately deactivated.**

1. **Scope of Communications to Be Provided in Electronic Form.** When you use a product or service to which this Disclosure applies, you agree that we may provide you with any Communications in electronic format, and that we may discontinue sending paper Communications to you, unless and until you withdraw your consent as described below. Your consent to receive electronic communications and transactions includes, but is not limited to:

- All legal and regulatory disclosures and communications associated with your Card Account and any related products or services
- Your Cardholder Agreement and any notices about a change in terms of your Cardholder Agreement
- Privacy policies and notices
- Error Resolution policies and notices
- Responses to claims filed in connection with your Card Account
- Notices regarding insufficient funds or negative balances

2. **Method of Providing Communications to You in Electronic Form.** All Communications that we provide to you in electronic form will be provided either (1) via e-mail (if you have elected to receive e-mail messages from us), (2) by access to a web site that we will designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to the www.netspend.com website.

3. **How to Withdraw Consent.** You may withdraw your consent to receive Communications in electronic form at any time by contacting us at 1-86-NETSPEND/1-

866-387-7363 or visiting the www.netspend.com web site. If you do withdraw your consent, we will send subsequent Communications to you in writing to the most current mailing address we have for you in our records. We will not impose any fee to process the withdrawal of your consent to receive electronic Communications. Any withdrawal of your consent to receive electronic Communications will be effective only after we have a reasonable period of time to process your request for withdrawal. In the meantime, you will continue to receive Communications in electronic form. If you withdraw your consent, the legal validity and enforceability of prior Communications delivered in electronic form will not be affected.

4. How to Update Your Records. It is your responsibility to provide us with a true, accurate and complete e-mail address (if you have elected to receive e-mail messages from us), your contact information, and other information related to this Disclosure and your Card Account, and to maintain and update promptly any changes in this information. You can update information (such as your e-mail address) through www.netspend.com or by contacting us at **1-86-NETSPEND/1-866-387-7363**.

5. Requesting Paper Copies. We will not send you a paper copy of any Communication, unless you request it or we otherwise deem it appropriate to do so. You can obtain a paper copy of an electronic Communication by printing it yourself or by requesting that we mail you a paper copy, provided that such request is made within a reasonable time after we first provided the electronic Communication to you. To request a paper copy, contact us by calling **1-86-NETSPEND/1-866-387-7363** or writing to us at NetSpend, P.O. Box 2136, Austin, TX 78768-2136. We may charge you a service charge for the delivery of paper copies of certain Communications provided to you electronically pursuant to this authorization. See the *Fee Schedule* for details about this service charge. We reserve the right, but assume no obligation, to provide a paper (instead of electronic) copy of any Communication that you have authorized us to provide electronically.

6. Termination/Changes. We reserve the right, in our sole discretion, to discontinue the provision of your electronic Communications, or to terminate or change the terms and conditions on which we provide electronic Communications. We will provide you with notice of any such termination or change as required by law.

CUSTOMER SERVICE

For customer service or additional information regarding your Card Account, please contact us at:

NetSpend
P.O. Box 2136
Austin, Texas 78768-2136
1-86-NETSPEND/1-866-387-7363

Customer Service agents are available to answer your calls:
Monday through Friday, 8 a.m. to 10 p.m. CT
Saturday and Sunday, 8 a.m. to 8 p.m. CT, excluding holidays.

Card Account balance inquiries made by telephone are subject to a fee. For information about the fee, see the section labeled "*Fee Schedule.*"

TELEPHONE MONITORING/RECORDING

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

NO WARRANTY REGARDING GOODS AND SERVICES

We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase with your Card or Virtual Account.

ARBITRATION

Purpose: This Arbitration Provision sets forth the circumstances and procedures under which claims (as defined below) may be arbitrated instead of litigated in court.

Definitions: As used in this Arbitration Provision the term "Claim" means any claim, dispute or controversy between you and us arising from or relating to the Card Account or this Agreement as well as any related or prior agreement that you may have had with us or the relationships resulting from this Agreement, including the validity, enforceability or scope of this Arbitration Provision or the Agreements. "Claim" includes claims of every kind and nature, including but not limited to initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. The term "Claim" is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (i) your Card Account; (ii) the amount of available funds in your Card Account; (iii) advertisements, promotions or oral or written statements related to your Card Account, or goods or services purchased with your Card or Virtual Account; (iv) the benefits and services related to your Card Account; and (v) your enrollment for any Card or Virtual Account. We shall not elect to use arbitration under the Arbitration Provision for any Claim that you properly file and pursue in a small claims court of your state or municipality so long as the Claim is individual and pending only in the court.

As used in the Arbitration Provision, the terms "we" and "us" shall for all purposes mean the Issuer, wholly or majority owned subsidiaries, affiliates, licensees, predecessors, successors, and assigns; and all of their agents, employees, directors and representatives. In addition, "we" or "us" shall include any third party using or

providing any product, service or benefit in connection with any Card Accounts (including, but not limited to merchants who accept the Card or Virtual Account, third parties who use or provide services, debt collectors and all of their agents, employees, directors and representatives) if, and only if, such third party is named as a co-party with us (or files a Claim with or against us) in connection with a Claim asserted by you. As solely used in this Arbitration Provision, the terms “you” or “yours” shall mean all persons or entities approved by us to have and/or use a Card, including but not limited to all persons or entities contractually obligated under any of the Agreements and all additional Cardholders.

Initiation of Arbitration Proceeding/Selection of Administrator: Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed. Claims shall be referred to either the Judicial Arbitration and Mediation Services (“JAMS”) or the American Arbitration Association (“AAA”), as selected by the party electing to use arbitration. If a selection by us of one of these organizations is unacceptable to you, you shall have the right within 30 days after you receive notice of our election to select the other organization listed to serve as arbitrator administrator. For a copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows: (i) JAMS at 1920 Main Street, Suite 300, Los Angeles, CA 92614; website at www.jamsadr.com; or (ii) AAA at 335 Madison Avenue, New York, NY 10017; website at www.adr.org.

Significance of Arbitration: IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE CODE OF PROCEDURES OF JAMS OR AAA, AS APPLICABLE (THE “CODE”). FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR’S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

Restrictions on Arbitration: If either party elects to resolve a Claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Cardholders or other persons similarly situated. The arbitrator’s authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator’s authority to make awards is limited to you and us alone. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated in arbitration with

Claims brought by or against someone other than you, unless otherwise agreed to in writing by all parties.

Location of Arbitration/Payment of Fees: Any arbitration hearing that you attend shall take place in the federal judicial district of your residence. At your written request, we will consider in good faith making a temporary advance of all or part of the filing, administrative and/or hearing fees for any Claim you initiate as to which you or we seek arbitration. At the conclusion of the arbitration (or any appeal thereof), the arbitrator (or panel) will decide who will ultimately be responsible for paying the filing, administrative and/or hearing fees in connection with the arbitration (or appeal). If and to the extent you incur filing, administrative and/or hearing fees in arbitration, including for any appeal, exceeding the amount they would have been if the Claim had been brought in the state or federal court which is closest to the mailing address we have in our records and would have had jurisdiction over the Claim, we will reimburse you to that extent unless the arbitrator (or panel) determines that the fees were incurred without any substantial justification.

Arbitration Procedures: This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended (the “FAA”). The arbitration shall be governed by the applicable Code, except that (to the extent enforceable under the FAA) this Arbitration Provision shall control if it is inconsistent with the applicable Code. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. In conducting the arbitration proceeding, the arbitrator shall not apply the Federal or any state rules of civil procedure or rules of evidence. Either party may submit a request to the arbitrator to expand the scope of discovery allowable under the applicable Code. The party submitting such a request must provide a copy to the other party, who may submit objections to the arbitrator with a copy of the objections provided to the requesting party, within fifteen (15) days of receiving the requesting party’s notice. The granting or denial of such request will be in the sole discretion of the arbitrator who shall notify the parties of his/her decision within twenty (20) days of the objecting party’s submission. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator’s decision will be final and binding, except for any right of appeal provided by the FAA. However, any party can appeal that award to a three-arbitrator panel administered by the same arbitration organization, which shall consider anew any aspect of the initial award objected to by the appealing party. The appealing party shall have thirty (30) days from the date of entry of the written arbitration award to notify the arbitration organization that it is exercising the right of appeal. The appeal shall be filed with the arbitration organization in the form of a dated writing. The arbitration organization will then notify the other party that the award has been appealed. The arbitration organization will

appoint a three-arbitrator panel which will conduct arbitration pursuant to its Code and issue its decision within one hundred twenty (120) days of the date of the appellant's written notice. The decision of the panel shall be by majority vote and shall be final and binding.

Continuation: This Arbitration Provision shall survive termination of your Card Account as well as voluntary payment of any debt in full by you, any legal proceeding by us to collect a debt owed by you, and any bankruptcy by you or us. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any principle or provision of law or equity, consistent with the FAA, it shall not invalidate the remaining portions of this Arbitration Provision, the Agreement or any prior agreements you may have had with us, each of which shall be enforceable regardless of such invalidity.

FEE SCHEDULE

All fees will be withdrawn from your Card Account and will be assessed as long as there is a remaining balance on your Card Account, except where prohibited by law. Any time your remaining Card Account balance is less than the fee amount being assessed, the balance of your Card Account will be applied to the fee amount.

Cost to Open Account/Card Purchase Fee: Fee will be determined and assessed by operator of retail location. In no event will the fee exceed \$9.95.

Refund Policy: The Card Purchase Fee is not refundable. Please call Customer Service with questions about our refund policy.

Three Purchase Plan Options:	Pay-As-You-GoSM Plan*	FeeAdvantageTM Plan	NetSpend Premier[®] FeeAdvantage Plan***
Monthly Fee	None	\$9.95	\$5.00
Signature Purchase Transaction Fee**	\$1.00 each	Included in Plan	Included in Plan
PIN Purchase Transaction Fee**	\$2.00 each	Included in Plan	Included in Plan
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction

* This Purchase Plan is automatically effective on your Card Account when you first obtain the Card. If you wish to change to another Purchase Plan, just call 1-86-NETSPEND or visit www.netspend.com.

**During checkout, select "CREDIT" on the keypad to make a Signature Purchase, or select "DEBIT" and enter your PIN to make a PIN Purchase.

*** Cardholder must receive \$500 in Direct Deposit(s) in one (1) calendar month to qualify for this optional Purchase Plan. An eligible Cardholder who is on the Pay-As-You-Go Plan may call 1-86-NETSPEND or visit www.netspend.com to change to this Purchase Plan; a Cardholder already enrolled in the \$9.95 FeeAdvantage Plan will be automatically changed to this Purchase Plan at the discounted rate.

Withdraw Cash (See our tip on how to avoid ATM fees below)

Over the Counter Cash Withdrawal Fee at a financial institution	\$2.50 per withdrawal, plus the Foreign Transaction Fee, if applicable. A fee may also be assessed by the financial institution and may vary from location to location.
Over the Counter Cash Withdrawal Fee at a NetSpend Reload Network location	Fee may be assessed by reload location and may vary from location to location. Service not available in all reload locations.
Domestic ATM Cash Withdrawal Fee	\$2.50 per withdrawal, plus ATM owner fees, if any.
International ATM Cash Withdrawal Fee	\$4.95 per withdrawal, plus the Foreign Transaction Fee, and ATM owner fees, if any.
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the cash withdrawal
ATM Transaction Decline Fee	\$1.00 each
Tip to avoid ATM fees: Select "DEBIT" and enter your PIN to get cash back when making purchases at many retailers, such as grocery stores.	

Add Money To Your Account:	
Direct Deposit Fee	No fee
Fee to add cash or check proceeds at a NetSpend Reload Network location	Fee may be assessed by reload location and may vary from location to location.
Bank Transfer Fee	Visit your online Account Center to learn how to transfer funds to your Card from another bank account using a bank debit card or account number. Fees are determined and may be charged to the transferor's bank account by the service provider or originating bank.
Account-to-Account Transfer Fee via website or text message	No fee; standard text message rates may apply.
Account-to-Account Transfer Fee via Customer Service agent	\$4.95 each

Manage Your Account:	
Balance Inquiry Fee	No fee using Online Account Center No fee using Anytime Alerts text or e-mail message; standard text message rates may apply \$0.50 each via Toll-Free Number automated service; fee waived for NetSpend Premier Cardholders \$0.50 each via Toll-Free Number Customer Service agent \$0.50 each via ATM
Check Refund, Paper Communications or Statement Mailing Fee	\$5.95 each
Additional Card Fee	\$9.95 each
Lost, Stolen or Damaged Card Replacement Fee	\$9.95 each
Account Maintenance Fee (also referred to as the Account Inactivity Fee)	\$5.95 per month (fee applies if Card Account has not had any activity, that is, no purchases; no cash withdrawals; no load transactions; or no balance inquiry fee for 90 days.) If enrolled in the FeeAdvantage Plan (FAP) or NetSpend Premier FAP and your Card Account has had no activity as described above, this fee applies instead of the FAP Fee.
Overdraft Protection Service Fee (This optional service has Cardholder activation and eligibility requirements.)	\$15.00 per Overdraft occurrence (maximum of 3 fees per calendar month).

Make Payments:	
Bill Payment Fee	In addition to the one or more no-cost bill payment methods made available through third-party service providers, you can see a full range of options, including ACH Debit/ Preauthorized Payment Transactions, and the applicable fees in your online Account Center. Fees are determined and assessed by third-party service providers.
ACH Debit/ Preauthorized Payment Transaction Decline Fee	\$1.00 for each such declined transaction.
Stop Payment Fee for ACH Debit/Preauthorized Payment Transactions	\$10.00 each

Optional Features:	
Custom Card Fee	\$4.95 per custom card, if available.

Refunds are at par. **This Cardholder Agreement is effective January 17, 2012.**

This Card is issued by MetaBank pursuant to a license from Visa U.S.A. Inc.

NS Premier Visa GPR – META - PC/ODP - Eng - 31Aug11

Choose the plan that's right for you.

Pay-As-You-GoSM Plan

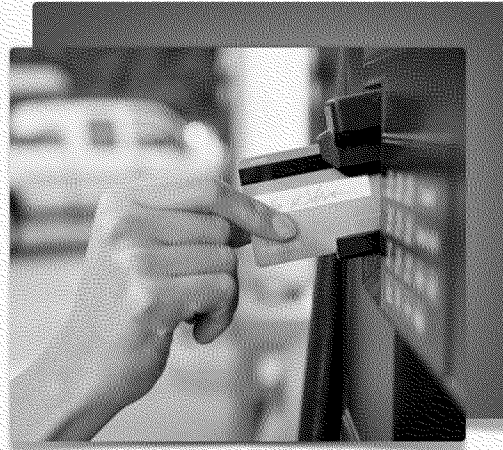
- No monthly fee
- Flexibility to pay fees for only the services you use
- Ideal for occasional card users

Monthly Plan

- Monthly fee of \$7.98
- Unlimited Signature and PIN purchases
- Ideal for card users who make more than 8 purchases a month

Annual Plan

- Annual fee of \$59.98
- Unlimited Signature and PIN purchases
- Ideal for frequent card users



To change your plan, please login to your account or call Customer Service at 1-866-226-1551.

Three Purchase Fee Plan Options:	Pay-As-You-Go SM Plan*	Monthly Plan	Annual Plan**
Plan Fee	None	\$7.98 per month, to be billed to the Card Account on the same day each calendar month	\$59.98 per year, to be billed to the Card Account on the same day each calendar year
Signature Purchase Transaction Fee***	\$1.00 each	Included in Plan	Included in Plan
PIN Purchase Transaction Fee***	\$2.00 each	Included in Plan	Included in Plan
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction

*This Purchase Fee Plan is automatically effective on your Card Account when you first obtain the Card. If you wish to change to another Purchase Fee Plan, call 1-866-226-1551.

**No portion of the Annual Plan Fee is refunded if you close your Card Account prior to the end of the year covered by the fee.

***During checkout, select "CREDIT" on the keypad to make a Signature Purchase, or select "DEBIT" and enter your PIN to make a PIN Purchase.

Withdraw Cash (See our tip on how to avoid ATM fees below)	
Domestic ATM Cash Withdrawal Fee	\$2.50 per withdrawal, plus ATM owner fees, if any
International ATM Cash Withdrawal Fee	\$4.95 per withdrawal, plus the Foreign Transaction Fee, and ATM owner fees, if any
Over the Counter Cash Withdrawal Fee at a financial institution (also referred to as the "OTC Fee")	A fee may be assessed by the financial institution and may vary from location to location. A Foreign Transaction Fee may apply.
Over the Counter Cash Withdrawal Fee at a NetSpend Reload Network location (also referred to as the "OTC Fee")	Fee may be assessed by reload location and may vary from location to location. Service not available in all reload locations.
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the cash withdrawal
ATM Transaction Decline Fee	\$1.00 each
Tip to avoid ATM fees: Select "DEBIT" and enter your PIN to get cash back when making purchases at many retailers, such as grocery stores	

Add Money To Your Account:	
Direct Deposit Fee	None
Fee to add cash or check proceeds at a NetSpend Reload Network location	Fee may be assessed by reload location and may vary from location to location.
Bank Transfer Fee	Visit your online Account Center to learn how to transfer funds to your Card from another bank account using a bank debit card or account number. Fees are determined and may be charged to the transferor's bank account by the service provider or origination bank.
Account-to-Account Transfer Fee via website or text message	None; standard text message rates may apply.
Account-to-Account Transfer Fee via Customer Service agent	\$4.95 each.

Manage Your Account:	
Balance Inquiry Fee	None when using online Account Center. None when using Anytime Alerts text or email message; standard text message rates may apply. None when using telephone automated service. \$0.50 each when speaking with a Customer Service agent. \$0.50 each via ATM, plus ATM owner fees, if any.
Check Request Fee	\$5.95 each.
Additional Statement Mailing Fee	\$5.95 each.
Additional Card Fee	\$4.98 each.
Lost, Stolen or Damaged Card Replacement Fee	\$4.95 each.
Account Maintenance Fee (also referred to as the "Account Inactivity Fee")	\$5.95 per month (Fee applies if Card Account has not had any activity, that is, no purchases, no cash withdrawals, no load transactions, or no Balance Inquiry Fee for 90 days.) If enrolled in a Plan and your Card Account has had no activity as described above, this fee applies (a) instead of the Monthly Plan Fee, or (b) if the Annual Plan Fee was paid.

Make Payments:	
Bill Payment Fee	In addition to the one or more no-cost bill payment methods made available through third-party service providers, you can see a full range of options, including ACH Debit/Preauthorized Payment Transactions, and the applicable fees in your online Account Center. Fees are determined and assessed by third-party service providers.
ACH Debit/Preauthorized Payment Transaction Decline Fee	\$1.00 for each such declined transaction.
Stop Payment Fee for ACH Debit/Preauthorized Payment Transactions	\$10.00 each.

Optional Features:	
Custom Card Fee	\$4.95 per custom card.
Overdraft Protection Service Fee (This optional service has Cardholder activation and eligibility requirements.)	\$15.00 per Overdraft occurrence (maximum of 3 fees per calendar month).

ABOUT PURPOSE

HOME
GET A CARD
FIND A RELOAD LOCATION
ADD MONEY
FEATURES
PLANS & FEES

QUESTIONS
CONTACT US
ESPAÑOL
PRIVACY POLICY
TERMS & CONDITIONS
VISA MEMBER BANKS
SITE MAP

MANAGE YOUR CARD

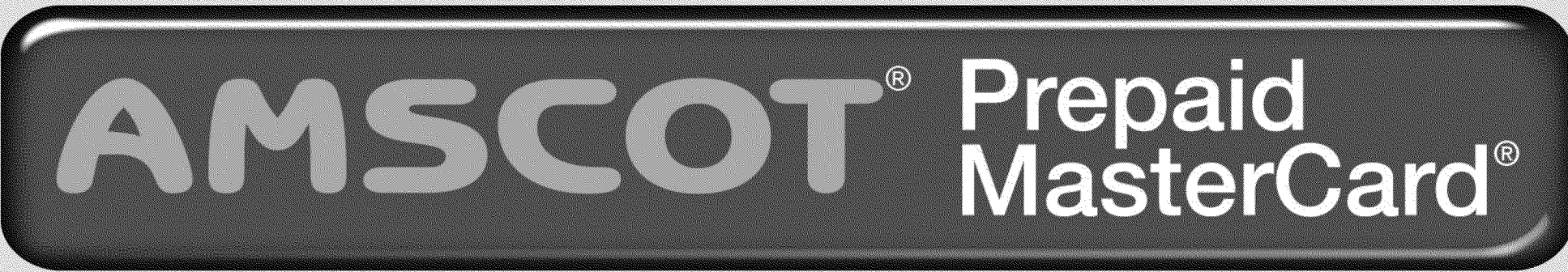
ACTIVATE CARD
CREATE ACCOUNT
LOG IN

The Purpose Visa® Prepaid Card is issued by MetaBank™, Member FDIC, pursuant to a license from Visa U.S.A. Inc. NetSpend, a TSYG Company, is an authorized Independent Sales Organization of MetaBank. Certain products and services provided by and through MetaBank are licensed in whole or in part from Alexant, Inc., and are covered by patents set forth at www.netspend.com/patentsandpatentinfo.

Use of this Card Account is subject to ID verification and funds availability. All trademarks and service marks belong to their owners.

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IMPORTANT INFORMATION FOR OPENING A NEW CARD ACCOUNT: To help the federal government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all financial institutions and their third-party service providers to obtain, verify, and record information that identifies each person who opens a Card Account. What this means for you: When you open a Card Account, we will ask for your name, street address, date of birth, and other information that will allow us to identify you. We may also ask to see a copy of your driver's license or other identifying documents. In accordance with Federal requirements, and if it is activated and registered, a prepaid debit card is subject to an initial load limitation, may not be used for international transactions or account-to-account transfers, or be reloaded.




Fee Schedule

Card Fulfillment** – (Non-refundable)	\$4.95
Value Load – Amscot Locations	Free
Value Load – Retail Locations – Fee varies by retailer.	
Value Load – Direct Deposit	Free
Online Statements	Free
Online Card Account Access	Free
SMS Text Messages (Message and data rates apply)	Free
Email Message Alerts	Free
Amscot POS Balance Inquiry	Free
Monthly Fee – Per Month	\$3.95
Paper Statement Fee – Per Statement	\$1.50
ATM Balance Inquiry	\$0.50
ATM Decline Fee	\$0.50
ATM Transaction Fee	\$1.25
International ATM Fee	\$3.00
Per Transaction Fee Signature	\$0.75
Per Transaction Fee PIN	\$0.95
Lost, Stolen, Damaged Card Fee	\$4.95
Priority Shipping – 3rd Business Day	\$26.00
Instant Card Replacement (Business hours at an Amscot only)	\$9.95
Card Account Closure Fee – (Check mailed with remaining balance 30 – 45 days processing)	\$15.00
Toll Free Automated Support	\$0.50
Live Customer Support Via Toll Free Number – (In addition to the toll free automated support)	\$0.50
Bank Teller Withdrawal – Per \$300 max \$900 Daily (Personalized cards only)	\$3.00
International Bank Teller Withdrawal - Per \$300 max \$900 Daily (Personalized cards only)	\$3.00
Online Bill Pay Electronic	\$0.88
Online Bill Pay Check	\$1.00
Online Bill Pay Check Cancelation	\$9.95

*Other Terms and Conditions apply. For a complete listing of Terms and Conditions for the Amscot Prepaid MasterCard please see your cardholder agreement.

**Obtaining Your Card: The USA PATRIOT Act is a Federal law that requires all financial institutions to obtain, verify, and record information that identifies each person who opens a Card Account. What this means for you: When you open a Card Account, we will ask you for your name, address, date of birth, and other information that will allow us to reasonably identify you. We may also ask to see your driver's license or other identifying documents at any time.

The Amscot Prepaid MasterCard is issued by MetaBank™ pursuant to license by MasterCard International Incorporated. MetaBank Member FDIC.



The Money Superstore™



Terms and Conditions

Cardholder Agreement

IMPORTANT -- PLEASE READ CAREFULLY

1. Terms and Conditions for the NetSpend Prepaid Debit Card Program.

This document constitutes the agreement ("**Agreement**") outlining the terms and conditions under which the NetSpend Prepaid Debit Card has been issued to you. By accepting and using this card, you agree to be bound by the terms and conditions contained in this Agreement. The Card is a prepaid debit card. The Card allows you to access funds you place on the Card. The Card does not constitute a checking, savings or other bank account and is not connected in any way to any other account you may have. The Card is not a credit card. You will not receive any interest on your funds on the Card. The Card will remain the property of MetaBank and must be surrendered upon demand. The Card is nontransferable, and it may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. Please read this Agreement carefully and keep it for future reference.

2. Definitions

In this Agreement, "Card" means the NetSpend Prepaid Debit Card issued to you by MetaBank. "You" and "your" means the person or persons who have received the Card and are authorized to use the Card as provided for in this Agreement. "We," "us," "our," and "Bank" mean MetaBank and its successors, affiliates or assignees.

Authorized Users: You may request an additional Card for another person. You are wholly responsible for the use of each Card according to the terms of this Agreement. Each cardholder and visitor to the www.netspend.com site (the "**Site**") agrees to these terms and conditions, as amended from time to time. If you do not agree to these terms and conditions, please do not use the Site or the Card. In order to become a cardholder, you must be an individual who can lawfully enter into and form contracts under applicable law.

Our Business Days: Our business days are Monday through Friday, excluding federal holidays, even if we are open.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

By participating in the Card Program, you warrant factual representation of the required information, including, but not limited to, your real name, valid U.S. mailing address and residential address (if different), Social Security number, age, and telephone number, is accurate. If you falsify, misrepresent, or fail to provide requested information, we may cancel your Card. In addition, funds tied to potentially illicit or illegal activity may be subject to both internal and potentially Federal investigation, which may delay their immediate access.

Personal Identification Number: We may, at our option, give you a Personal Identification Number ("PIN"). If we give you a PIN, you may use your Card, (i) to obtain Cash from any Automated Teller Machine ("ATM") or (ii) at any Point-of-Sale ("POS") device which requires entry of a PIN that bears the brand mark of the Card Association, Visa/PLUS or PULSE. All ATM transactions are treated as Cash withdrawal transactions. You should not write or keep your PIN with your Card. If you believe that anyone has gained unauthorized access to your PIN, you should advise us immediately, following the procedures in the paragraph labeled "Your Liability for Unauthorized Transfers."

Loading Your Card: You may add funds to your Card, called "value loading," at any time. (There is no limit on the number of times you may value load your Card.) However, the maximum value load you may place on your Card when aggregated with any other Cards you have authorized is restricted. You agree to present the Card and meet identification requirements to complete load transactions. In addition, you may arrange to have all or a portion of a payroll check, government benefits payment, or other check, electronically deposited to your Card via the Automated Clearing House ("ACH") system ("**Direct Deposit**" or "**ACH Deposit**"). In order to receive Direct Deposits from multiple payment providers, you must separately enroll each of those providers.

Using Your Card

You may use your Card to purchase or lease goods or services wherever the Card is honored as long as you do not exceed the value available on your Card. You are responsible for all transactions initiated by use of your Card. If you permit someone else to use your Card we will treat this as if you have authorized such use and you will be responsible for any transactions made subject to such use. If you do not have enough value loaded on your Card you can instruct the merchant to charge a part of the purchase to the Card and pay the remaining amount with cash or another card. These are called "split transactions." Some merchants do not allow cardholders to conduct split transactions. Some merchants will only allow you to do a split transaction if you pay the remaining amount in cash.

If you use your Card number without presenting your Card (such as for a mail order or telephone purchase), the legal effect will be the same as if you used the Card itself. For security reasons, we may limit the amount or number of transactions you can make on your Card. Your Card cannot be redeemed for cash. You may use your Card to access cash at an ATM. You may use your Card to access cash at a participating bank (an "**Over the Counter Withdrawal**" or "**OTC**

Withdrawal"). You may not use your Card for unlawful domestic and/or international online gambling or for any illegal transactions, including the purchase of illegal goods or services.

You should keep track of the amount of value loaded on Cards issued to you. You may call the Customer Service number shown on your Card and shown below to obtain the current value on your Card. The toll-free Customer Service number is **1-86-NETSPEND (1-866-387-7363)**. You will be charged a fee (see the *Fees Related to the Service chart ("Fee Schedule")* located in this Agreement) to check your balance if you call the Customer Service number; however, to obtain this information without incurring a fee, visit the Site. The Customer Service hours of operation are 8 a.m. to 10 p.m. CT, Monday through Friday, and 8 a.m. to 8 p.m. CT, Saturday and Sunday, excluding holidays.

Each time you use your Card, you authorize us to reduce the value available on your Card by the amount of the transaction plus applicable fees. You are not allowed to exceed the available amount on your Card through an individual transaction or a series of transactions. Nevertheless, if a transaction exceeds the balance of the funds available on your Card (creating a "**Negative Balance**") you shall remain fully liable to us for the amount of the transaction and any applicable fees or charges. You agree to pay us promptly for the Negative Balance and any applicable transaction fees. We reserve the right to cancel this Card should you create one or more Negative Balances with your Card.

You do not have the right to stop payment on any purchase transaction originated by use of your Card. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold for that amount of funds. Please note that we have no control over when a merchant settles a previously authorized transaction. When you use your Card to make certain transactions such as renting a car, booking a hotel room, purchasing airline tickets, or for gas purchases made at the pump, a debit hold (a "**Hold**") may be applied to your Card. A Hold may be initiated for a variety of reasons, including but not limited to, providing a security deposit, or ensuring your account has sufficient funds when the transaction is completed. Funds loaded to your account that are subject to a Hold will not be available to pay for other purchases or ATM withdrawals until the Hold is released. We have no control over when a merchant releases a Hold you previously authorized. When a merchant requests a Hold to be released the funds will be available to you after we have had a reasonable opportunity to process the request. Holds for car rental agencies, hotels, and airlines can remain on your Card longer than three (3) business days. Holds initiated by a gas station may remain in place until the final transaction is presented to us, usually within three (3) business days.

Limitations on the Frequency of Transfers: For security reasons, we may limit the amount or number of transactions you can make with your Card Account. The standard maximum cumulative cash amount that may be withdrawn from your Card Account via ATM during any 24-hour period is \$940.00. Any funds withdrawn from a point-of-sale ("**POS**") device or through an OTC Withdrawal will be subject to the maximum per transaction amount that can be spent using your Card Account: no individual transaction made with your Card Account can exceed \$4,999.99. The maximum value of your Card Account is restricted to \$15,000.00, at any point in time. We will determine these maximum values by aggregating the activity and value of all Card Accounts you may have with us.

3. Returns and Refunds

If you are entitled to a refund for any reason for goods or services obtained with your Card, you agree to accept credits to your Card for such refunds. The amounts credited to your Card for refunds may not be immediately available. While merchant refunds post as soon as they are received, please note that we have no control over when a merchant sends a credit transaction and the refund may not be available for a number of days after the date the refund transaction occurs.

4. Foreign Transactions

If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the amount deducted from your funds will be converted by the Card Association into an amount in the currency of your Card. The Card Association will establish a currency conversion rate for this convenience using a rate selected by the Card Association from the range of rates available in wholesale currency markets for the applicable central processing date which may vary from the rate the Card Association itself receives, or the government-mandated rate in effect for the applicable central processing date, in each instance, plus or minus any adjustment determined by us.

5. Receipts

You should get a receipt at the time you make a transaction or obtain cash using your Card. You agree to retain your receipts to verify your transactions.

6. Obtaining Card Account Information

You may obtain your available balance by accessing your Card Account online; enrolling in the Anytime Alerts™ SMS service; or by calling our toll-free number **1-86-NETSPEND (1-866-387-7363)** (there may be a fee for this call, see the *Fees Related to the Service chart*). Statements in electronic format—including a sixty (60)-day history of account transactions will be made available free of charge at www.netspend.com during each month in which a transaction occurs. You will not automatically receive paper statements. You have the right to obtain a sixty (60) day written history of account transactions by calling our toll-free number or by writing to us at NetSpend, P.O. Box 2136, Austin, TX 78768-2136. There is a fee for obtaining a written history—see the *Fees Related to the Service chart*.

7. Fees and Charges:

By enrolling in the Card program, you agree to pay any and all associated fees as outlined in the Fee Schedule. Please refer to the Fee Schedule and read it carefully. There is an Account Maintenance fee assessed monthly. For accounts with at least one purchase, cash withdrawal, value load transaction, or balance inquiry fee assessed within 90 days, this Account Maintenance fee is waived.

8. Confidentiality

We may disclose information to third parties about your Card or the transactions you make:

- (1) Where it is necessary for completing transactions;
- (2) In order to verify the existence and condition of your Card for a third party, such as merchant
- (3) In order to comply with government agency, court order, or other legal reporting requirements;

- (4) If you give us your written permission, or;
- (5) To our employees, auditors, affiliates, service providers, or attorneys as needed.

9. Our Liability for Failure to Complete Transactions

In no event will we be liable for consequential damages (including lost profits), extraordinary damages, special or punitive damages. We will not be liable, for instance:

- (1) If, through no fault of ours, you do not have enough funds available on your Card to complete the transaction;
- (2) If a merchant refuses to accept your Card;
- (3) If an ATM where you are making a cash withdrawal does not have enough cash;
- (4) If an electronic terminal where you are making a transaction does not operate properly, and you knew about the problem when you initiated the transaction;
- (5) If access to your Card has been blocked after you reported your Card lost or stolen;
- (6) If there is a hold or your funds are subject to legal process or other encumbrance restricting their use;
- (7) If we have reason to believe the requested transaction is unauthorized;
- (8) If circumstances beyond our control (such as fire, flood or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken;
- (9) Any other exception stated in our Agreement with you.

10. Your Liability for Unauthorized Transfers

Contact us AT ONCE if you believe your Card or PIN has been lost or stolen; used for any unauthorized transactions; or if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way to minimize your possible losses. If you believe your Card or PIN has been lost or stolen, or that someone has transferred or may transfer money from your Card Account without your permission, call us at **1-86-NETSPEND (1-866-387-7363)**. If you notify us within two (2) business days of any unauthorized transactions, you can lose no more than \$50.00 if someone used your Card or PIN without your permission. If you do not notify us within two (2) business days after you learn of the loss or theft of your Card or PIN and we can prove that we could have stopped someone from using your Card or PIN without your permission if you had promptly notified us, you could lose as much as \$500.00. Also, if you become aware of and/or your electronic history shows transactions that you did not make, including those made with your Card or other means, notify us at once following the procedures described below concerning your right to dispute errors. If you do not notify us in writing within sixty (60) calendar days after you become aware of the transaction and/or after the statement was made available to you, you may not get back any value you lost after the sixty (60) calendar days if we can prove that we could have stopped someone from taking the value if you had notified us in time and you are grossly negligent or fraudulent in the handling of your Card Account. If your Card or PIN has been lost or stolen, we will close your Card Account to keep losses down.

11. Preauthorized Payment

Your Card Account and its routing information, i.e., your Card Account number and the bank routing number, may be used for arranging both direct deposit and preauthorized direct debits from merchants and internet service or other utility providers ("Merchants"). To stop a

preauthorized direct debit from a Merchant (also referred to as a "preauthorized payment") you must first contact the Merchant to request the recurring debit be cancelled. If the Merchant with whom you have arranged recurring payments from your Card Account has not responded to your request to stop such payments, you can call us at **1-86-NETSPEND (1-866-387-7363)** or write to us at: NetSpend, P.O. Box 2136, Austin, TX 78768-2136. We must receive your request at least three (3) business days before the payment is scheduled to be made to the Merchant. Such a stop payment request will cancel a single preauthorized payment. If you want to permanently stop all preauthorized payments to a Merchant then we require you to put your request in writing and get it to us within fourteen (14) calendar days after you tell us you want to stop such payments. We will charge you for each stop payment order you give. See the *Fees Related to the Service chart* in your Agreement. If the regular payments you make might vary in amount, the Merchant will tell you the payment date and the amount of the payment ten (10) calendar days before each payment is scheduled to take place. (*You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.*) If you order us to stop a preauthorized payment three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

12. Other Terms

Your Card and your obligations under this Agreement may not be assigned. We may transfer our rights under this Agreement. Use of your Card is subject to all applicable rules and customs of any clearinghouse or other association involved in transactions. We do not waive our rights by delaying or failing to exercise them at anytime. If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this Agreement shall not be affected. This Agreement will be governed by the laws of the State of South Dakota except to the extent governed by federal law.

13. Amendment and Cancellation

We may amend or change the terms of this Agreement at any time. You will be notified of any change in the manner provided by applicable law prior to the effective date of the change. However, if the change is made for security purposes, we can implement such change without prior notice.

We may cancel or suspend your Card or this Agreement at any time. You may cancel this Agreement by calling **1-86-NETSPEND (1-866-387-7363)** or following the procedures set forth in the "Close Your Account" section found at the Site. Your termination of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to termination.

14. Information About Your Right to Dispute Errors

In case of errors or questions about your Card Account, telephone us at 1-86-NETSPEND (1-866-387-7363), write to us at: NetSpend, P.O. Box 2136, Austin, TX 78768-2136, or email us at www.netspend.com as soon as you can, if you think an error has occurred in your Card Account. We must allow you to report an error until sixty (60) days after the earlier of the date you electronically access your Card Account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may

request a written history of your transactions at any time by calling us at **1-86-NETSPEND (1-866-387-7363)**, or writing us at: NetSpend, P.O. Box 2136, Austin, TX 78768-2136.

You will need to tell us:

- (1) Your name and Card Account number;
- (2) Why you believe there is an error, and the dollar amount involved; and
- (3) Approximately when the error took place. If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) calendar days to investigate your complaint or question. If we decide to do this, we will credit your Card Account within ten (10) business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and you do not provide it within ten (10) business days, we may not credit your Card Account.

For errors involving new Cards, POS transactions, or foreign-initiated transactions, we may take up to ninety (90) calendar days to investigate your complaint or question. For new Card Accounts, we may take up to twenty (20) business days to credit your Card Account for the amount you think is in error. We will tell you the results within three (3) business days after completing the investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents we used in our investigation. If you need more information about our error-resolution procedures, call us at **1-86-NETSPEND (1-866-387-7363)** or visit www.netspend.com.

15. Privacy and Data Protection

(i) Information We Collect ("**Cardholder Information**"):

- (a) Information about purchases made with the Card, such as date of purchase, amount and place of purchase
- (b) Information you provide to us when you apply for a Card, or for replacement Cards or when you contact us with customer service issues, such as name, address, phone number.

(ii) Information Security: Only those persons who need it to perform their job responsibilities are authorized to have access to Cardholder Information. In addition, we maintain physical, electronic and procedural security measures that comply with federal regulations to safeguard Cardholder Information.

(iii) Disclosure: We may use Cardholder Information to provide customer services, to process claims for lost or stolen Cards, to develop marketing programs, to help protect against fraud and to conduct research and analysis. In addition, it is often necessary for us to disclose Cardholder Information for the same purposes to companies that work with us. For example, we may provide certain Cardholder Information to companies that perform business operations or services, including marketing services, on our behalf. We may also provide certain Cardholder Information to others as permitted by law, such as government entities or other third parties in response to subpoenas.

16. Telephone Monitoring/Recording

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

17. No Warranty Regarding Goods and Services

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

18. Arbitration

(a) Purpose: This Arbitration Provision sets forth the circumstances and procedures under which claims (as defined below) may be arbitrated instead of litigated in court.

(b) Definitions: As used in this Arbitration Provision, the term "**Claim**" means any claim, dispute or controversy between you and us arising from or relating to the Card or this Agreement as well as any related or prior agreement that you may have had with us or the relationships resulting from this Agreement, including the validity, enforceability or scope of this Arbitration Provision or the Agreements. "Claim" includes claims of every kind and nature, including but not limited to initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. The term "Claim" is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (i) your Card, or the Cards of any Additional Cardholders designated by you; (ii) the amount of Available Funds on the Cards; (iii) advertisements, promotions or oral or written statements related to the Cards, goods or services purchased with the Cards; (iv) the benefits and services related to the Cards; and (v) your enrollment for any Card. We shall not elect to use arbitration under the Arbitration Provision for any Claim that you properly file and pursue in a small claims court of your state or municipality so long as the Claim is individual and pending only in the court.

As used in the Arbitration Provision, the terms "we" and "us" shall for all purposes mean the Bank, wholly or majority owned subsidiaries, affiliates, licensees, predecessors, successors, and assigns; and all of their agents, employees, directors and representatives. In addition, "we" or "us" shall include any third party using or providing any product, service or benefit in connection with any Cards (including, but not limited to merchants who accept the Card, third parties who use or provide services, debt collectors and all of their agents, employees, directors and representatives) if, and only if, such third party is named as a co-party with us (or files a Claim with or against us) in connection with a Claim asserted by you. As solely used in this Arbitration Provision, the terms "you" or "yours" shall mean all persons or entities approved by us to have and/or use a Card, including but not limited to all persons or entities contractually obligated under any of the Agreements and all Additional Cardholders.

(c) Initiation of Arbitration Proceeding/Selection of Administrator: Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed. Claims shall be referred to either the Judicial Arbitration and Mediation Services ("**JAMS**"), or the American Arbitration Association ("**AAA**"), as selected by the party electing to use arbitration. If a selection by us of one of these organizations is unacceptable to you, you shall have the right within 30 days after you receive notice of our election to select either of the other organizations listed to serve as arbitrator administrator. For a

copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows: (i) JAMS at 1920 Main Street, Suite 300, Los Angeles, CA 92614; website at www.jamsadr.com; (ii) AAA at 335 Madison Avenue, New York, NY 10017; website at www.adr.org.

(d) Significance of Arbitration: **IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE CODE OF PROCEDURES OF THE JAMS OR AAA, AS APPLICABLE (THE "CODE"). FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.**

(e) Restrictions on Arbitration: If either party elects to resolve a Claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Cardholders or other persons similarly situated. The arbitrator's authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator's authority to make awards is limited to you and us alone. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless otherwise agreed to in writing by all parties.

(f) Location of Arbitration/Payment of Fees: Any arbitration hearing that you attend shall take place in the federal judicial district of your residence. At your written request, we will consider in good faith making a temporary advance of all or part of the filing, administrative and/or hearing fees for any Claim you initiate as to which you or we seek arbitration. At the conclusion of the arbitration (or any appeal thereof), the arbitrator (or panel) will decide who will ultimately be responsible for paying the filing, administrative and/or hearing fees in connection with the arbitration (or appeal). If and to the extent you incur filing, administrative and/or hearing fees in arbitration, including for any appeal, exceeding the amount they would have been if the Claim had been brought in the state or federal court which is closest to your billing address and would have had jurisdiction over the Claim, we will reimburse you to that extent unless the arbitrator (or panel) determines that the fees were incurred without any substantial justification.

(g) Arbitration Procedures: This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended (the "FAA"). The arbitration shall be governed by the applicable Code, except that (to the extent enforceable under the FAA) this Arbitration Provision shall control if it is inconsistent with the applicable Code. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. In conducting the arbitration proceeding, the arbitrator shall not apply the Federal or any state rules of civil procedure or rules of evidence. Either party may submit a request to the arbitrator to expand the scope of discovery allowable under the applicable Code. The party submitting such a request must provide a copy to the other

party, who may submit objections to the arbitrator with a copy of the objections provided to the requesting party, within fifteen (15) days of receiving the requesting party's notice. The granting or denial of such request will be in the sole discretion of the arbitrator who shall notify the parties of his/her decision within twenty (20) days of the objecting party's submission. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of appeal provided by the FAA. However, any party can appeal that award to a three-arbitrator panel administered by the same arbitration organization, which shall consider anew any aspect of the initial award objected to by the appealing party. The appealing party shall have thirty (30) days from the date of entry of the written arbitration award to notify the arbitration organization that it is exercising the right of appeal. The appeal shall be filed with the arbitration organization in the form of a dated writing. The arbitration organization will then notify the other party that the award has been appealed. The arbitration organization will appoint a three-arbitrator panel which will conduct an arbitration pursuant to its Code and issue its decision within one hundred twenty (120) days of the date of the appellant's written notice. The decision of the panel shall be by majority vote and shall be final and binding.

(h) Continuation: This Arbitration Provision shall survive termination of your Card as well as voluntary payment of the debt in full by you, any legal proceeding by us to collect a debt owed by you, and any bankruptcy by you or us. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any principle or provision of law or equity, consistent with the FAA, it shall not invalidate the remaining portions of this Arbitration Provision, the Agreement or any prior agreement you may have had with us, each of which shall be enforceable regardless of such invalidity.

Electronic Fund Transfer and Privacy Policy Disclosure Statements

The Electronic Fund Transfer Disclosure (which is part of your NetSpend Prepaid Debit Card Program terms and conditions) and Annual Privacy Policy Notices are available to you in hard copy or electronic format; however, you consent to electronic delivery of future disclosures. These subsequent disclosures will not be distributed in paper unless you contact us and request a paper version. Upon request, the disclosures will be provided to you in paper format if you send a written request to NetSpend Corporation, Attn: Customer Service, P.O. Box 2136, Austin, TX 78768-2136, or call us at **1-86-NETSPEND (1-866-387-7363)**.

You may withdraw your consent to receive the disclosures electronically. In order to withdraw your consent, you must contact us in writing at NetSpend Corporation, Attn: Customer Service, P.O. Box 2136, Austin, TX 78768-2136, or call us at **1-86-NETSPEND (1-866-387-7363)**.

Your consent applies to the Electronic Fund Transfer Disclosure and the Privacy Policy Disclosure. To ensure that we are able to provide you with notices and information from time to time, you must update us with any change in your email address. To do so, please contact us in writing at NetSpend Corporation, Attn: Customer Service, P.O. Box 2136, Austin, TX 78768-2136, or call us at **1-86-NETSPEND (1-866-387-7363)**. In order to receive the disclosures electronically the following minimum computer hardware and software requirements must be met: IBM compatible or Macintosh personal computer system with Internet connectivity;

available hard disk drive space of at least 50 kb; a computer pointing device, such as a mouse; 128-bit SSL (Secure Socket Layer)-compatible browser, such as Internet Explorer 5.0, or higher; computer monitor capable of displaying Internet Web pages and graphics; graphical user interface operating system, such as Windows 2000 or later, or OS9.

By opening a Prepaid Debit Card Account with us, you certify that you agree to the Prepaid Debit Card Account terms and conditions, that you consent to receive disclosures electronically, that you have not withdrawn said consent and that you agree to the terms and conditions of the Cardholder Agreement.

Fees Related to the Service:

*Refunds are at par. None of the fees listed are assessed by The Bancorp Bank, MetaBank, or the Card Association. International ATM withdrawals may be subject to varying daily limits at the ATM owner's discretion.

Pay-As-You-Go Customers	
Signature Purchase Convenience Fee	\$1.00
PIN Purchase Convenience Fee	\$2.00
Card Fulfillment (Shipping & Handling)	FREE
Fee Advantage Customers	
Monthly Service Fee	\$9.95, billed on cardholder's cycle date
Signature Purchase Convenience Fee	FREE
PIN Purchase Convenience Fee	FREE
Card Fulfillment (Shipping & Handling)	FREE
Other Fees	
Adding or withdrawing funds to your account at local	Convenience fee determined by

distributors	distributor
Account-to-Account Transfer — Via Internet	FREE
Account-to-Account Transfer — Via Toll Free Number	\$1.00
Account-to-Account Transfer — Via Live Agent	\$4.95
Non-Monetary Transactions -- Via Internet	FREE
Non-Monetary Transactions -- Via Toll Free Number	Up to \$0.50
Non-Monetary Transactions -- at ATM	Up to \$0.50
Account Maintenance (waived if account has debit or credit transaction and/or balance inquiry within 90 days)	\$5.95 per month
Check or Additional Statement Mailing Fee	\$5.95
Domestic ATM Cash Withdrawal / Cash Withdrawal at Distributor	Up to \$2.50 per withdrawal, plus ATM owner fees, if any
ATM Transaction Decline Fee	\$1.00
International ATM Cash Withdrawal	\$4.95 per withdrawal plus ATM owner fees, if any
Lost or Stolen Card Replacement Fee	Up to \$9.95

NetSpend Prepaid Debit Card Program Privacy Policy

MetaBank and NetSpend Corporation, its Member Service Provider, recognize that the trust of our customers is one of our most important assets. As such, our primary goal is to deliver innovative payment products and world-class service while ensuring the integrity and sanctity of our customers' privacy. The following outlines some of the steps that we take on a daily basis to ensure that our customers' information is secure, private, and used only in a manner consistent with our customers' wishes.

We will safeguard, according to our strict standards of security and confidentiality, any and all information our customers share with us. We use advanced security techniques and processes designed to protect the integrity and privacy of our customers' information, particularly when this information is used by our employees and partners to provide customer service.

We collect nonpublic personal information about you from the following sources: (i) Information we receive from you on applications or other forms, (ii) Information about your transactions with us, or others such as your account balance, transaction history, parties to transactions and card usage, and (iii) Information we received from third parties, including government agencies and consumer-reporting agencies, such as your tax identification number, credit worthiness, and credit history. We advise our customers about the general uses of the information we collect about them, and we will gladly and promptly provide additional explanation if our customers request it.

We may disclose aggregate information about our customers and former customers to third parties with whom we may have a joint marketing agreement, or those companies who perform marketing services on our behalf. This includes all information we may collect directly or indirectly from you.

We will permit only authorized employees, who are properly trained in the appropriate handling of sensitive customer information, to have access to that information, and only if required by their business responsibilities. Employees who violate our Privacy Policy are subject to our disciplinary process, up to and including termination.

We give our customers choices as to how their information is used, if at all. We provide our customers with the opportunity to remove their names used for mail, telephone or online marketing upon initial customer contact and subsequently on an annual basis. This opt -out choice includes products and services offered by NetSpend and our affiliate marketing partners, and customers may easily opt out by contacting us via U.S. mail or telephone.

Except as outlined above, we limit the release of customer information. In addition to providing our customers with the opportunity to opt out of marketing offers, we release information only with the customer's consent or request, or when we are required to do so by law or other regulatory authority. When a court order or subpoena requires us to release customer information, we notify the customer promptly in order to provide the customer with the opportunity to exercise their legal rights. The only exception to this policy is when we are prohibited from notifying the customer by law or due to a court order, or in cases in which fraud, money laundering and/or criminal or illegal activity is suspected.

We quickly respond to our customers' requests for explanation. In the event that we deny service or choose to end a customer's relationship, and to the extent permitted by applicable laws, we will provide a prompt and detailed explanation if requested.

We will notify our customers in the event that our privacy policy changes. If our privacy policy is modified, we will attempt to notify our customers of these changes via email, U.S. mail or via telephone. As customers do now, they will continue to have a choice as to whether or not they

allow us to use their information in this different manner. In addition, if we make any material changes in our privacy practices that do not affect user information already stored in our database, we will post a prominent notice on the NetSpend Prepaid Debit Card Program website (www.netspend.com) notifying users of said change(s). In some cases where we post the notice we will also email users, who have opted to receive communications from us, notifying them of the changes in our privacy practices. We will post our annual privacy notice to the cardholder's account center on our website. When we post our annual privacy policy notice we will also email cardholders notifying them of the annual privacy policy notice. Should you wish, a paper annual privacy policy notice will be made available to you upon request.

Updating customer information. Should customers need to update any information they have previously supplied to us, they may contact Customer Service at **1-86-NETSPEND (1-866-387-7363)** from 8 a.m. to 10 p.m. CT, Monday through Friday, and 8 a.m. to 8 p.m. CT, Saturday and Sunday, excluding holidays. Customers may also email us at customerservice@netspend.com.

If you wish to opt out of our and our partners' marketing offers, please contact us via U.S. mail at the following address: **NetSpend Prepaid Card Program**

P.O. Box 2136

Austin, TX 78768-2136

Or you may call us at **1-86-NETSPEND (1-866-387-7363)**.

The information above applies to all NetSpend Prepaid Debit Card Program customers, including those who transact primarily on the Internet. Please see www.netspend.com for privacy policy information pertaining to the use of our site.

**INSIGHT VISA® PREPAID RELOADABLE CARD
 CARDHOLDER AGREEMENT**

Your Insight Visa® Prepaid Card Fee Summary			
Purchase Plan Options	Pay As You Go	Gold Plan	Platinum Plan
Monthly Fee	None	\$9.95 per month without Direct Deposit	\$5.00 per month with Direct Deposit
Signature Purchase Transaction Fee	\$1.00	None	None
PIN Purchase Transaction Fee	\$2.00	\$1.00	\$1.00
Foreign Transaction Fee	3% of the U.S. dollar amount of the purchase transaction with \$1 minimum		

Withdraw Cash:	
Cash Back with PIN Purchase	None. Select "Debit" and enter your PIN to get cash back when making a purchase. PIN purchase transaction fee applies.
Domestic ATM Withdrawal Fee	\$2.50 per withdrawal
International ATM Withdrawal Fee	\$2.50 per withdrawal, plus the Foreign Transaction Fee
Over-the-Counter Cash Withdrawal Fee	3% of transaction with \$5 minimum

Add Money:	
Cash Load Fee	Fee may be assessed by a third party and may vary by location.
Card-to-Card Transfer Fee	\$1.00 each
Direct Deposit	None
Mobile Check Load Fee	1% of transaction with \$3.50 minimum

Manage Your Account:	
Balance Inquiry	<ul style="list-style-type: none"> • None using online account access • None using toll-free automated service. • None using automated text or e-mail alerts • \$1.00 each via ATM[†]
Live Agent Customer Service Call Fee	\$1.00 each
Check Refund, Paper Communication, or Statement	None
Secondary Card, Replacement Card, or Custom Card Fee	\$9.95 per card
Text and E-mail Alerts [‡]	None

Make Payments:	
Online Bill Payment	None
Convenience Check Authorization Fee	\$1.00 each
Convenience Check Reorder	\$5.00 for 12 checks
Check Stop Payment Request or Unauthorized Check Fee	\$25.00 each

Caution:	
Account Inactivity Fee ^{**}	\$3.95
ACH Debit Return Fee	\$5.00 each
ATM & Purchase Decline Fee	\$1.00 each
Overdraft Protection Program Fee (This optional service has Cardholder activation and eligibility requirements.)	\$15.00 per overdraft occurrence (maximum of 3 fees per calendar month).
[†] ATM owner fees may apply. [‡] Standard message and data rates may apply. ^{**} May apply to <i>Pay-As-You-Go Plan</i> after 90 days of no activity, which includes purchases, cash withdrawals, and load transactions.	
www.InsightCards.com	1.888.572.8472

**PLEASE SIGN YOUR CARD IMMEDIATELY UPON RECEIPT.
 THE CARD IS NOT A CREDIT CARD. IT IS RELOADABLE BY
 YOU AND IS NOT A GIFT CARD.**

DO NOT TELL ANYONE YOUR PIN.

**PLEASE READ THIS AGREEMENT CAREFULLY AND KEEP IT
 FOR FUTURE REFERENCE. SECTION 16 CONTAINS A
 MANDATORY ARBITRATION PROVISION.**

These Terms and Conditions of Use and Cardholder Agreement (this "Agreement") and the fee schedule above ("Schedule of Fees") constitute our disclosure to you and an agreement between you and us with respect to our issuance and your use of your prepaid Visa reloadable card ("Card"). If you initially purchase a Card that is not embossed with your name (an "Instant Issue Card"), you may receive a Card embossed with your name in the mail within about 14 days of your Card purchase ("Personalized Card"). Your Instant Issue Card may not be reloaded until your identity has been confirmed as discussed below. Card means any Instant Issue Card, Personalized Card, and any Secondary Card issued pursuant to this Agreement.

Once you have loaded funds to your Card, you will have electronic access to those funds for purchases at merchant point-of-sale ("POS") locations and cash withdrawals at automated teller machine ("ATM") locations. Your Card is issued by Republic Bank of Chicago pursuant to a license from Visa U.S.A., Inc. It will remain our property and it may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. You must surrender a revoked Card, and you may not use an expired or revoked Card. The Card is a reloadable prepaid card, and is not a credit card or a loan. You will not receive any interest on funds held on the Card. The Card is not for resale and is nontransferable.

You will be deemed to have accepted the Card and the terms and conditions of this Agreement if you: sign the back of the Card; or use the Card.

Definitions: In this Agreement: "you" or "your" means any person who has received the Card and is authorized to use it as provided for in this Agreement, and "we", "us" or "our" means Republic Bank of Chicago, and its successors and assigns. "Visa" means Visa U.S.A., Inc. and its successors and assigns. In addition:

"Activity Report" means the record detailing your use of your Card that you may access online or by calling us, as described below.

"Available Balance" means a balance created for your transactions on your Card. It refers to the value of funds available on the Card at any one time, and it is limited to the dollar amount of prepaid funds that you have loaded into the Card or have been loaded into the Card on your behalf, less withdrawals and amounts deducted for purchases and for fees, and less any amounts you have transferred to your Insight Savings Account.

"Business Day" refers to Monday through Friday, except Federal holidays, even if we are open.

"Secondary Cardholder" refers to a person who has received a Card at your request and is authorized to use the Card as provided for in this Agreement.

"Insight Savings Account" means a separate account that you may establish that will not be used for your transactions. To use the Insight Savings Account, you must first accept and agree to the terms and condition applicable to the Insight Savings Account.

Card Purchaser and Authorized Users: You acknowledge and agree that: (i) you are a U.S. citizen or legal alien residing in one of the 50 states of the U.S. or the District of Columbia with a verifiable U.S. mailing address and (ii) you are at least 18 years of

CARDHOLDER AGREEMENT IMPORTANT – PLEASE READ CAREFULLY

Terms and Conditions/Definitions for the ion™ Visa® Prepaid Card

This Cardholder Agreement ("Agreement") outlines the terms and conditions under which the ion Visa Prepaid Card has been issued to you by The Bancorp Bank, Wilmington, Delaware (the "The Bancorp Bank" or "Issuer"). The Issuer is an FDIC insured member institution. "Card" means the ion Visa Prepaid Card issued to you by The Bancorp Bank. By accepting and using the Card, you agree to be bound by the terms and conditions contained in this Agreement. "Card Account" means the records we maintain to account for the value of claims associated with the Card. "You" and "your" mean the person or persons who have received the Card and are authorized to use the Card as provided for in this Agreement. "We," "us," and "our" mean the Issuer, our successors, affiliates or assignees. You acknowledge and agree that the value available in the Card Account is limited to the funds that you have loaded into the Card Account or have been loaded into the Card Account on your behalf. You agree to sign the back of the Card immediately upon receipt. The expiration date of the Card is identified on the front of your Card. The Card is a prepaid card. The Card is not connected in any way to any other account. The Card is not a credit card. The Card is not for resale. You will not receive any interest on your funds in the Card Account. The Card will remain the property of the Issuer and must be surrendered upon demand. The Card is nontransferable and it may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. The Card is not designed for business use, and we may close your Card if we determine that it is being used for business purposes. We may refuse to process any transaction that we believe may violate the terms of this Agreement.

Our business days are Monday through Friday, excluding federal holidays, even if we are open. Any references to "days" found in this Agreement are calendar days unless indicated otherwise.

Write down your Card number and the customer service phone number provided in this Agreement on a separate piece of paper in case your Card is lost, stolen, or destroyed. Keep the paper in a safe place. Please read this Agreement carefully and keep it for future reference.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW CARD ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens a Card Account. What this means for you: When you open a Card Account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see a copy of your driver's license or other identifying documents.

Activate Your Card

You must activate your Card before it can be used. You may activate your Card by visiting www.ionprepaid.com or calling 866.692.9356. You will need to provide personal information in order to verify your identity.

Personal Identification Number

You will not receive a Personal Identification Number ("PIN") with your Card Account. However, you will receive a PIN once you have registered your Card with your personal information. You should not write or keep your PIN with your Card. Never share your PIN with anyone. When entering your PIN, be sure it cannot be observed by others and do not enter your PIN into any terminal that appears to be modified or suspicious. If you believe that anyone has gained unauthorized access to your PIN, you should advise us immediately following the procedures in the paragraph labeled "Your Liability for Unauthorized Transfers." To register your Card, visit the website at www.ionprepaid.com or call 866.692.9356 and provide the following personal information: your 16-digit Card number, your date of birth and the last 4-digits of your Social Security number.

Authorized Card Users

You are responsible for all authorized transactions initiated and fees incurred by use of your Card. If you permit another person to have access to your Card or Card number, we will treat this as if you have authorized such use and you will be liable for all transactions and fees incurred by those persons. You are wholly responsible for the use of each Card according to the terms and conditions of this Agreement.

Secondary Cardholder

You may request an additional Card for another person. The maximum number of additional Cards permitted is one (1). You must notify us to revoke permission for any person you previously authorized to use the Card. If you notify us to revoke another person's use of the Card, we may revoke your Card and issue a new Card with a different number. You remain liable for any and all usage of an additional Card you authorize.

Your Representations and Warranties

By activating the Card or by retaining, using or authorizing the use of the Card, you represent and warrant to us that: (i) you are at least 18 years of age (or older if you reside in a state where the majority age is older); (ii) you are a U.S. citizen or legal alien residing in the United States or the District of Columbia; (iii) you have provided us with a verifiable U.S. street address (not a P.O. Box); (iv) the personal information that you provide to us in connection with the Card is true, correct and complete; (v) you received a copy of this Agreement and agree to be bound by and to comply with its terms; and (vi) you accept the Card.

Cash Access

With your PIN, you may use your Card to obtain cash from any Automated Teller Machine ("ATM") or any Point-of-Sale ("POS") device, as permissible by a merchant, that bears the Visa®, Interlink®, Plus® or STAR® Acceptance Mark. All ATM transactions are treated as cash withdrawal transactions. You may use your Card at an ATM. The maximum cumulative amount that may be withdrawn from an ATM per day is \$500.00. The maximum cumulative amount that may be withdrawn through a participating bank (over the counter withdrawal) is \$1,000.00. Any funds withdrawn from a POS device will be subject to the maximum amount that can be spent on your Card per day.

Loading Your Card

You may add funds to your Card, called "value loading", at any time. The minimum amount of the initial value load and each value reload via cash at a participating ion Visa Prepaid Card retailer is \$0.01. The minimum initial value load and each value reload via money order, cashier's check or personal check at a participating ion Visa Prepaid Card retailer is \$10.00. The minimum initial value load and each value reload via Green Dot® MoneyPak® and Visa ReadyLink is \$20.00. The minimum amount of the initial value load via direct deposit is \$0.01 and each value reload is \$0.01. The maximum amount of each value reload is as follows: \$500.00 via MoneyPak and Visa ReadyLink (maximum in-store reload limits apply); \$5,000.00 via cash at a participating ion Visa Prepaid Card retailer; \$10,000.00 via direct deposit; and \$25,000.00 via money order, cashier's check or personal check at a participating ion Visa Prepaid Card retailer. The maximum number of times you may load your Card per day at a participating ion Visa Prepaid Card retailer is five (5). The maximum number of times you may load your Card per day through MoneyPak or Visa ReadyLink is four (4), with a maximum of ten (10) loads per month. There is no limit to the number of times you may load your Card via direct deposit per day. You may add value or load your Card via cash, money order, cashier's check, or personal check at a participating ion Visa Prepaid Card retailer; cash via MoneyPak or Visa ReadyLink; or direct deposit from your employer. In order to load funds to the Card using a MoneyPak, simply purchase a MoneyPak with cash at a participating retailer in the amount you want loaded to the Card. To load the funds on the MoneyPak, visit www.moneypak.com. Fees are charged by Green Dot to purchase and use a MoneyPak, but there are no additional fees assessed for a Green Dot cash load. In order to load funds to the Card using Visa ReadyLink, visit a participating merchant location near you (<http://usa.visa.com/locators/readylinklocations.jsp>), swipe your Card and give the total cash amount (cash to be added to your Card plus the store fee) to the cashier. A retailer may apply a cash load fee for the Visa ReadyLink load. You may be asked to provide identification by the participating network merchant. The loading network may have additional limitations on the amount and frequency of cash loads. Information on how to initiate all loads can be found at www.ionprepaid.com. You will have access to funds loaded via cash, check, or money order immediately. Funds availability for direct deposit loads are subject to timing of payer's funding but will always be made available the morning of the effective date of the deposit. Personal checks, cashier's checks, and money orders sent to the Issuer are not an acceptable form of loading. All checks and money orders sent to the Issuer for Card loading will be returned unless the full amount may be applied towards a negative balance, in which case the check or money order may or may not be loaded to the Card at the discretion of the Issuer.

(a) We and Employer, where applicable, reserve the right to deduct funds from your Card Account in order to correct a previous error or overpayment to you, and you authorize us (i) to share information as necessary with any funding entity (including Employer) in connection with resolving any errors or overpayments related to Retail Loads, Payroll Loads or ACH Loads and (ii) to the extent applicable, to accept instructions from Employer to add or deduct funds from your Card Account and, in the case of deductions, to return those funds to Employer.

(b) We have the right to offset against your Card Account balance any indebtedness owed by you to us, whether individually or jointly owed. We may offset your Card Account balance either before or after your death without demand or notice to you. We will not be liable for any dishonored transaction entry that results.

Direct Deposit Account

Your prepaid Card Account and associated direct deposit account number cannot be used for preauthorized direct debits from merchants or from utility or Internet service providers. If presented for payment, these preauthorized direct debits will be declined and your payment to the merchant or provider will not be processed. The bank routing number and direct deposit account number are for the purpose of initiating direct deposits to your prepaid Card Account only. You are not authorized to provide this bank routing number and direct deposit account number to anyone other than your employer or payer.

Using Your Card/Features

The maximum amount that can be spent on your Card per day is \$2,525.00. The maximum value of your Card is restricted to \$25,000.00.

You may use your Card to purchase or lease goods or services everywhere Visa debit cards, Interlink cards, or STAR cards are accepted as long as you do not exceed the value available on your Card Account. Some merchants do not allow cardholders to conduct split transactions where you would use the Card as partial payment for goods and services and pay the remainder of the balance with another form of legal tender. If you wish to conduct a split transaction and it is permitted by the merchant, you must tell the merchant to charge only the exact amount of funds available on the Card to the Card. You must then arrange to pay the difference using another payment method. Some merchants may require payment for the remaining balance in cash. If you fail to inform the merchant that you would like to complete a split transaction prior to swiping your Card, your Card is likely to be declined.

If you use your Card at an automated fuel dispenser ("pay at the pump"), the merchant may preauthorize the transaction amount up to \$100.00 or more. If your Card is declined, even though you have sufficient funds available, pay for your purchase inside with the cashier. If you use your Card at a restaurant, a hotel, for a car rental purchase, or for similar purchases, the merchant may preauthorize the transaction amount for the purchase amount plus up to 20% or more to ensure there are sufficient funds available to cover tips or incidental expenses incurred. Any preauthorization amount will place a "hold" on your available funds until the merchant sends us the final payment amount of your purchase. Once the final payment amount is received, the preauthorization amount on hold will be removed. It may take up to seven (7) days for the hold to be removed. During the hold period, you will not have access to the preauthorized amount.

If you use your Card number without presenting your Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if you used the Card itself. For security reasons, we may limit the amount or number of transactions you can make on your Card. Your Card cannot be redeemed for cash. You may not use your Card for online gambling or any illegal transaction.

Each time you use your Card, you authorize us to reduce the value available in your Card Account by the amount of the transaction and any applicable fees. You are not allowed to exceed the available amount in your Card Account through an individual transaction or a series of transactions. Nevertheless, if a transaction exceeds the balance of the funds available on your Card, you shall remain fully liable to us for the

amount of the transaction and any applicable fees.

You do not have the right to stop payment on any purchase or payment transaction originated by use of your Card. You may not make preauthorized regular payments from your Card Account. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold for that amount of funds for up to thirty (30) days. All transactions relating to car rentals may result in a hold for that amount of funds for up to sixty (60) days.

Non-Visa Debit Transactions

New procedures are in effect that may impact you when you use your Card at certain merchant locations. In the past, transactions have been processed as Visa debit transactions unless you entered a PIN. Now, if you do not enter a PIN, transactions may be processed as either a Visa debit transaction or as a STAR transaction.

Merchants are responsible for and must provide you with a clear way of choosing to make a Visa debit transaction if they support the option. Please be advised that should you choose to use the STAR network when making a transaction without a PIN, different terms may apply. Certain protections and rights applicable only to Visa debit transactions as described in this Agreement will not apply to transactions processed on the STAR network. Please refer to the paragraph labeled "Your Liability for Unauthorized Transfers" for a description of these rights and protections applicable to Visa debit and non-Visa debit transactions.

To initiate a Visa debit transaction at the POS, swipe your Card through a POS terminal, sign the receipt, or provide your Card number for a mail order, telephone, or Internet purchase. To initiate a non-Visa debit transaction at the POS, enter your PIN at the POS terminal or provide your Card number after clearly indicating a preference to route your transaction as a non-Visa debit transaction for certain bill payment, mail order, telephone, or Internet purchases.

Returns and Refunds

If you are entitled to a refund for any reason for goods or services obtained with your Card, you agree to accept credits to your Card for such refunds and agree to the refund policy of that merchant. The Issuer or Ion Visa Prepaid Card are not responsible for the delivery, quality, safety, legality or any other aspects of goods or services that you purchase from others with a Card. All such disputes must be addressed and handled directly with the merchant from whom those goods or services were provided.

Card Replacement

If you need to replace your Card for any reason, please contact us at 866.692.9356 to request a replacement Card. You will be required to provide personal information which may include your Card number, full name, transaction history, copies of accepted identification, etc. There is a fee for replacing your card.

Transactions Made In Foreign Currencies

If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the amount deducted from your funds will be converted by Visa into an amount in the currency of your Card. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate Visa U.S.A. Inc. itself receives, or the government-mandated rate in effect for the applicable central processing date. If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the Issuer may assess a foreign currency conversion fee of 3% of the transaction amount and will retain this amount as compensation for its services. Transactions made outside of the 50 United States and the District of Columbia are also subject to this conversion fee even if they are completed in U.S. currency.

Receipts

You should get a receipt at the time you make a transaction using your Card. You agree to retain, verify, and reconcile your transactions and receipts.

Card Account Balance/Periodic Statements

You are responsible for keeping track of your Card Account available balance. Merchants generally will not be able to determine your available balance. It's important to know your available balance before making any transaction. You may obtain information about the amount of money you have remaining in your Card Account by calling 866.692.9356. This information, along with a sixty (60) day history of Card Account transactions, is also available online at www.ionprepaid.com. You also have a right to obtain a sixty (60) day written history of Card Account transactions by calling 866.692.9356 or by writing us at Statement Services, Ion Visa Prepaid Card, PO Box 94332, Las Vegas, NV 89193-4332. You will not automatically receive paper statements.

Confidentiality

We may disclose information to third parties about your Card or the transactions you make:

- (1) Where it is necessary for completing transactions;
- (2) In order to verify the existence and condition of your Card for a third party, such as merchant;
- (3) In order to comply with government agency, court order, or other legal or administrative reporting requirements;
- (4) If you consent by giving us your written permission;
- (5) To our employees, auditors, affiliates, service providers, or attorneys as needed; or
- (6) Otherwise as necessary to fulfill our obligations under this Agreement

Our Liability for Failure to Complete Transactions

If we do not properly complete a transaction from your Card on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (1) If through no fault of ours, you do not have enough funds available on your Card to complete the transaction;
- (2) If a merchant refuses to accept your Card;
- (3) If an ATM where you are making a cash withdrawal does not have enough cash;
- (4) If an electronic terminal where you are making a transaction does not operate properly, and you knew about the problem when you initiated the transaction;
- (5) If access to your Card has been blocked after you reported your Card lost or stolen;
- (6) If there is a hold or your funds are subject to legal or administrative process or other encumbrance restricting their use;
- (7) If we have reason to believe the requested transaction is unauthorized;
- (8) If circumstances beyond our control (such as fire, flood, or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken; or
- (9) Any other exception stated in our Agreement with you.

Your Liability for Unauthorized Transfers

Contact us at once if you believe your Card has been lost or stolen. Telephoning is the best way to minimize your possible losses. If you believe your Card has been lost or stolen, or that someone has transferred or may transfer money from your Card Account without your permission, call us at [Insert 866.692.9356]. Under Visa U.S.A. Inc. Operating Regulations, your liability for unauthorized Visa debit transactions on your Card Account is \$0 if you are not grossly negligent or fraudulent in the handling of your Card. This reduced liability does not apply to PIN transactions not processed by Visa or ATM cash withdrawals. If you notify us within two (2) business days of any unauthorized transactions, you can lose no more than \$50.00 if someone used your Card without your permission. If you do not notify us within two (2) business days after you learn of the loss or theft of your Card and we can prove that we could have stopped someone from using your Card without your permission if you had promptly notified us, you could lose as much as \$500.00.

Also, if you become aware of and/or your statement shows transactions that you did not make, notify us at once following the procedures stated in the paragraph labeled "Information About Your Right to Dispute Errors". If you do not notify us in writing within sixty (60) days after you become aware of the transaction and/or after the statement was made available to you, you may not get back any value you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the value if you had notified us in time and you are grossly negligent or fraudulent in the handling of your Card. If your Card has been lost or stolen, we will close your Card Account to keep losses down.

Other Miscellaneous Terms

Your Card and your obligations under this Agreement may not be assigned. We may transfer our rights under this Agreement. Use of your Card is subject to all applicable rules and customs of any clearinghouse or other association involved in transactions. We do not waive our rights by delaying or failing to exercise them at anytime. If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this Agreement shall not be affected. This Agreement will be governed by the law of the State of Delaware except to the extent governed by federal law.

Fee Schedule - All fee amounts will be withdrawn from your Card Account and will be assessed as long as there is a remaining balance on your Card Account, except where prohibited by law. Anytime your remaining Card Account balance is less than the fee amount being assessed, the balance of your Card Account will be applied to the fee amount resulting in a zero balance on your Card Account. If you use an ATM not owned by us for any transaction, including a balance inquiry, you may be charged a fee by the ATM operator even if you do not complete a withdrawal. This ATM fee is a third party fee amount assessed by the individual ATM operator only and is not assessed by us. This ATM fee amount will be charged to your Card.

Exhibit 7: Ion Prepaid Card (Money Tree)

FEE NAME	UNLIMITED PURCHASE PLAN	PAY-AS-YOU-GO	
ACTIVITY BASED FEES	AMOUNT	AMOUNT	NOTE
ATM Cash Withdrawal Fee (Domestic)	\$2.00 per transaction	\$2.00 per transaction	Additional third party ATM charges may apply
ATM Cash Withdrawal Fee (Foreign)	\$2.00 per transaction	\$2.00 per transaction	Additional third party ATM charges may apply
ATM Balance Inquiry Fee (Domestic)	\$1.00 per transaction	\$1.00 per transaction	Additional third party ATM charges may apply
ATM Balance Inquiry Fee (Foreign)	\$1.00 per transaction	\$1.00 per transaction	Additional third party ATM charges may apply
Signature Purchase Fee (Domestic)	No Fee	\$1.00 per transaction	
Signature Purchase Fee (Foreign)	No Fee	\$1.00 per transaction	
Our PIN Purchase Fee (Domestic)	No Fee	\$1.00 per transaction	
Our PIN Purchase Fee (Foreign)	No Fee	\$1.00 per transaction	
Teller Cash Fee (Domestic and Foreign)	\$2.00 per transaction	\$2.00 per transaction	
OTHER FEES	AMOUNT	AMOUNT	NOTE
Lost/Stolen Card Replacement Fee	\$5.00 per Card	\$5.00 per Card	
Personalized Replacement Card Fee	\$5.00 per Card	\$5.00 per Card	
Companion Card Fee	\$5.00 per Card	\$5.00 per Card	
Express Delivery Fee	\$35.00 per request	\$35.00 per request	Replacement expedited with 2-3 day shipping
Text Alerts	No Fee	No Fee	Standard text messaging rates from your wireless service provider may apply
Customer Service Call Fee	No Fee	No Fee	
Auto Phone System Call Fee	No Fee	No Fee	
International Transaction Fee - SC	3% per transaction	3% per transaction	
PERIODIC FEES	AMOUNT	AMOUNT	NOTE
Monthly Fee	\$5.00 per month	No Fee	No charge in same month as enrollment/activation
Maintenance Fee	No Fee	\$5.00 per month	Assessed after 6 months with no consumer-initiated balance changing transactions

*The card is issued with the Unlimited Purchase Plan unless you choose the Pay-As-You-Go Plan at the time of purchase. You must remain in the fee plan you select as long as you have and use the card.

Amendment and Cancellation

We may amend or change the terms and conditions of this Agreement at any time. You will be notified of any change in the manner provided by applicable law prior to the effective date of the change. However, if the change is made for security purposes, we can implement such change without prior notice. We may cancel or suspend your Card or this Agreement at any time. You may cancel this Agreement by returning the Card to us. Your cancellation of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to termination.

In the event that your Card Account is cancelled, closed, or terminated for any reason, you may request the unused balance to be returned to you via a check to the mailing address we have in our records. The Issuer reserves the right to refuse to return any unused balance amount less than \$1.00.

The Information About Your Right to Dispute Errors

In case of errors or questions about your electronic transactions, call 866.692.9356 or write to Dispute Processing - Bankcard, PO Box 5017, Sioux Falls, SD 57117-5017 or fax us at 605.988.3346 if you think your statement or receipt is wrong or if you need more information about a transaction listed on the statement or receipt. We must allow you to report an error until sixty (60) days after the earlier of the date you electronically access your Card Account, if the error could be viewed in your electronic history, or the date we sent the FIR ST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at 866.692.9356 or writing us at Statement Services, ion Visa Prepaid Card, PO Box 94332, Las Vegas, NV 89193-4332. You will need to tell us:

1. Your name and Card Account number
2. Why you believe there is an error, and the dollar amount involved
3. Approximately when the error took place

If you provide this information orally, we may require that you send your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your Card within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes to complete the investigation. If you do not have federal payments (for example, Social Security benefits, tax refunds or other government payments) deposited to your Card Account, we may not credit your Card. If we ask you to put your complaint or question in writing and you do not provide it within ten (10) business days, we may not credit your Card.

For errors involving new Cards, POS transactions, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing the investigation. If we decide that there was no error, we will send you a written explanation. Copies of the documents used in the investigation may be obtained by contacting us at the phone number or address listed at the beginning of this section. If you need more information about our error-resolution procedures, call us at the telephone number shown above or visit www.ionprepaid.com.

English Language Controls

Any translation of this Agreement is provided for your convenience. The meanings of terms, conditions and representations herein are subject to definitions and interpretations in the English language. Any translation provided may not accurately represent the information in the original English.

Customer Service

For customer service or additional information regarding your Card, please visit www.ionprepaid.com or contact us at:

Cardholder Services, ion Visa Prepaid Card
 PO Box 94332, Las Vegas, NV 89193-4332
 866.692.9356

Customer Service agents are available to answer your calls 24 hours per day, seven days per week.

Telephone Monitoring/Recording

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

No Warranty Regarding Goods or Services as Applicable

We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase with your Card.

Arbitration

Any claim, dispute, or controversy ("Claim") arising out of or relating in any way to: i) this Agreement; ii) your Card; iii) the Cards of any additional cardholders designated by you; iv) your purchase of the Card; v) your usage of the Card; vi) the amount of available funds in the Card Accounts; vii) advertisements, promotions or oral or written statements related to the Cards, as well as goods or services purchased with the Card; viii) the benefits and services related to the Cards; or ix) transaction on the Card, no matter how described, pleaded or styled, shall be **FINALLY** and **EXCLUSIVELY** resolved by binding individual arbitration conducted by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act (9 U.S.C. 1-16).

We will pay the initial filing fee to commence arbitration and any arbitration hearing that you attend shall take place in the federal judicial district of your residence.

ARBITRATION OF YOUR CLAIM IS MANDATORY AND BINDING. NEITHER PARTY WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM THROUGH A COURT. IN ARBITRATION, NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL OR TO ENGAGE IN DISCOVERY, EXCEPT AS PROVIDED FOR IN THE AAA CODE OF PROCEDURE.

For a copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows: AAA, at 335 Madison Avenue, New York, NY 10017 or at www.adr.org.

All determinations as to the scope, interpretation, enforceability and validity of this Agreement shall be made final exclusively by the arbitrator, which award shall be binding and final. Judgment on the arbitration award may be entered in any court having jurisdiction.

NO CLASS ACTION, OR OTHER REPRESENTATIVE ACTION OR PRIVATE ATTORNEY GENERAL ACTION OR JOINDER OR CONSOLIDATION OF ANY CLAIM WITH A CLAIM OF ANOTHER PERSON OR CLASS OF CLAIMANTS SHALL BE ALLOWABLE.

This arbitration provision shall survive: i) the termination of the Agreement; ii) the bankruptcy of any party; iii) any transfer, sale or assignment of your Card, or any amounts owed on your Card, to any other person or entity; or iv) expiration of the Card. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall remain in force.

IF YOU DO NOT AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT, DO NOT ACTIVATE OR USE THE CARD. SAVE YOUR RECEIPT AND CALL US AT 866.692.9356 TO CANCEL YOUR CARD AND TO REQUEST A REFUND.

This Cardholder Agreement is effective 07.2013

CARDHOLDER AGREEMENT
IMPORTANT – PLEASE READ CAREFULLY

Terms and Conditions/Definitions for the Momentum Visa Prepaid Debit Card

This Cardholder Agreement (“Agreement”) constitutes the Agreement between you, The Bancorp Bank, Wilmington, Delaware (“The Bancorp Bank” or “Issuer”), and ITC Financial Licenses, Inc. outlining the terms and conditions under which the Momentum Visa Prepaid Debit Card has been issued to you by the Issuer. The Issuer is an FDIC insured member institution. “Card” means the Momentum Visa Prepaid Debit Card issued to you by The Bancorp Bank. By accepting and using the Card, you agree to be bound by the terms and conditions contained in this Agreement. **IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, DO NOT ACTIVATE OR USE THE CARD, SAVE YOUR RECEIPT AND CALL US AT 1-855-721-5041 TO CANCEL YOUR CARD AND REQUEST A REFUND.** “Card Account” means the records we maintain to account for the value of claims associated with the Nonpersonalized Card or Personalized Card. “Non-personalized Card” means the non-personalized Momentum Visa Prepaid Debit Card purchased from a participating retailer. “Personalized Card” means the personalized Momentum Visa Prepaid Debit Card you will receive following your successful completion of the Issuer’s identification verification process and receipt of the Issuer’s approval (see the below captioned “Important Information About Procedures for Opening a New Card Account”). All Cards are issued by the Issuer and distributed and serviced by ITC Financial Licenses, Inc. All Cards sold in the State of Texas are distributed and serviced by ITC Financial Licenses, Inc. “You” and “your” mean the person or persons who have purchased or received the Card and are authorized to use the Card as provided for in this Agreement. “We,” “us,” and “our” mean the Issuer, ITC Financial Licenses, Inc. and their respective successors, affiliates, parents, subsidiaries or assignees. You may contact ITC Financial Licenses, Inc. by telephone at 1-800-571-1376 or by mail at P.O. Box 826, Fortson, Georgia 31808. You acknowledge and agree that the value available in the Card Account is limited to the funds that you have loaded into the Card Account or have been loaded into the Card Account on your behalf. The expiration date of the Card is identified on the front of your Card. The Card is a prepaid card. The Card is not connected in any way to any other account. The Card is not a credit card and will not enhance your credit rating. The Card is not for resale. You will not receive any interest on your funds in the Card Account. The Card will remain the property of the Issuer and must be surrendered upon demand. The Card is nontransferable and it may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. You agree to sign the back of the Card immediately upon receipt. Signing the back of the Card, using the Card, or allowing someone else to use the Card, means that you accept and agree to be bound by this Agreement. The Card is not designed for business use, and we may close your Card if we determine that it is being used for business purposes. We may refuse to process any transaction that we believe may violate the terms of this Agreement.

Our business days are Monday through Friday, excluding federal holidays, even if we are open. Any references to “days” found in this Agreement are calendar days unless indicated otherwise.

Write down your Card number and the customer service telephone number provided in this Agreement on a separate piece of paper in case your Card is lost, stolen, or destroyed. Keep the paper in a safe place. Please read this Agreement carefully and keep it for future reference.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW CARD ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who obtains a Card. What

this means for you: When you register a Card, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see a copy of your driver's license or other identifying documents.

ACTIVATE YOUR CARD

You must successfully complete the Issuer's identification verification process and receive the Issuer's approval (see the above captioned "Important Information about Procedures for Opening a New Card Account") prior to being issued a Non-personalized Card. The Nonpersonalized Card will be activated at the time that you receive it. Once you have been issued a Non-personalized Card, we will issue and mail a Personalized Card to you. **YOU MUST ACTIVATE YOUR PERSONALIZED CARD PRIOR TO USING IT.** To activate your Card, call Customer Service at the telephone number indicated on the back of your Card or visit www.momentumcard.com. Upon activating your Personalized Card, your Non-personalized Card will be deactivated, and any remaining funds associated with your Non-personalized Card will be transferred to your Personalized Card. We may refuse to activate your Card at our sole discretion. For example, we may refuse to activate the Card if the Card is reported lost or stolen.

PERSONAL IDENTIFICATION NUMBER

You will receive a Personal Identification Number ("PIN"), which will be printed on the materials accompanying the Card that is issued to you by the store. When you receive your Personalized Card, this PIN will transfer over to the new Card. You should not write or keep your PIN with your Card. Never share your PIN with anyone. When entering your PIN, be sure it cannot be observed by others and do not enter your PIN into any terminal that appears to be modified or suspicious. If you believe that anyone has gained unauthorized access to your PIN, you should advise us immediately following the procedures in the paragraph labeled "Your Liability for Unauthorized Transfers."

AUTHORIZED CARD USERS

You are responsible for all authorized transactions initiated and fees incurred by use of your Card. If you permit another person to have access to your Card or Card number, we will treat this as if you have authorized such use and you will be liable for all transactions and fees incurred by those persons. You are wholly responsible for the use of each Card according to the terms and conditions of this Agreement.

FDIC INSURANCE

All funds associated with the Card shall be held by ITC Financial Licenses, Inc. in an account with the Issuer for your benefit, with the balance of such funds to be reduced through your use of such funds or through the imposition of fees and other charges in accordance with the terms of this Agreement. If you have provided us with the personal information described in the paragraph above labeled "Important Information about Procedures for Opening a New Card Account," then such funds are insured by the Federal Deposit Insurance Corporation ("FDIC") up to the maximum amount specified by FDIC regulations.

SECONDARY CARDHOLDER

You may not request an additional Card for another person.

YOUR REPRESENTATIONS AND WARRANTIES

By purchasing or activating the Card or by retaining, using or authorizing the use of the Card, you represent and warrant to us that: (i) you are at least 18 years of age (or older if you reside in a state where the majority age is older); (ii) you are a U.S. citizen or legal alien residing in the United States, Puerto Rico or the District of Columbia; (iii) you have provided us with a verifiable U.S. street address (not a P.O. Box); (iv) the personal information that you provide to us in connection with the Card is true, correct and complete; (v) you received a copy of this Agreement and agree to be bound by and to comply with its terms; and (vi) you accept the Card.

DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO YOU, AND HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE CARD OR RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LIMITATION OF LIABILITY WE WILL NOT BE LIABLE TO YOU FOR: DELAYS OR MISTAKES RESULTING FROM ANY CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOVERNMENTAL AUTHORITIES, NATIONAL EMERGENCIES, INSURRECTION, WAR, OR RIOTS; THE FAILURE OF MERCHANTS TO HONOR THE CARD; THE FAILURE OF MERCHANTS TO PERFORM OR PROVIDE SERVICES; COMMUNICATION SYSTEM FAILURES; OR FAILURES OR MALFUNCTIONS ATTRIBUTABLE TO YOUR EQUIPMENT, ANY INTERNET SERVICE, OR ANY PAYMENT SYSTEM. IN THE EVENT THAT WE ARE HELD LIABLE TO YOU, YOU WILL ONLY BE ENTITLED TO RECOVER YOUR ACTUAL DAMAGES. IN NO EVENT SHALL YOU BE ENTITLED TO RECOVER ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES (WHETHER IN CONTRACT, TORT OR OTHERWISE), EVEN IF YOU HAVE ADVISED US OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL NOT BE EFFECTIVE TO THE EXTENT OTHERWISE REQUIRED BY LAW. TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT YOUR RECOVERY FOR ANY ALLEGED NEGLIGENCE OR MISCONDUCT BY US SHALL BE LIMITED TO THE TOTAL AMOUNT LOADED ON THE CARD.

CASH ACCESS

With your PIN, you may use your Card to obtain cash from any Automated Teller Machine ("ATM") or any Point-of-Sale ("POS") device, as permissible by a merchant that bears the Visa®, Interlink® or STAR® Acceptance Mark. All ATM transactions are treated as cash withdrawal transactions. You may use your Card at an ATM, a POS device or through a participating bank (over-the-counter withdrawal), in each case in one or more transactions. The maximum cumulative amount that may be withdrawn from an ATM per day is \$1,000.00. The maximum cumulative amount that may be withdrawn from a POS device per day is \$10,000.00. The maximum cumulative amount that may be withdrawn through a participating bank (over-the-counter withdrawal) per day is the total available balance on the Card. If you seek to withdraw cash from a merchant POS device, please note that each merchant may establish limits as to how much cash may be obtained from a POS device at a single time or through a single location. This means that you may need to visit more than one merchant if you are seeking to withdraw cash in an amount which is less than or equal to the total limit above, but more than the limit established by the individual merchant.

LOADING YOUR CARD

You may add funds to your Card, called "value loading", at any time. The minimum amount of the initial value load is \$10.00. The minimum amount of each value reload is \$10.00. The maximum amount of each initial load or value reload via direct deposit is \$7,500.00 per transaction, in each case subject to a total Card balance limit of

\$10,000.00. The maximum number of times you may load your Card per day is five (5), so long as the Card balance does not exceed \$10,000.00. You may add value or load your Card via cash at participating retail locations. You may also load your Card via direct deposit. See www.momentumcard.com for more information on how to load your Card. You will have access to your funds immediately after load / reload is complete. You will have access to your funds from direct deposit by the morning following the directdeposit date. Personal checks, cashier's checks, and money orders sent to the Issuer are not an acceptable form of loading. All checks and money orders sent to the Issuer for Card loading will be returned unless the full amount may be applied towards a negative balance, in which case the check or money order may or may not be loaded to the Card at the discretion of the Issuer.

DIRECT DEPOSIT ACCOUNT

Your prepaid Card Account and associated direct deposit account number cannot be used for preauthorized direct debits from merchants or from utility or Internet service providers. If presented for payment, these preauthorized direct debits will be declined and your payment to the merchant or provider will not be processed. The bank routing number and direct deposit account number are for the purpose of initiating direct deposits to your prepaid Card Account only. You are not authorized to provide this bank routing number and direct deposit account number to anyone other than your employer or payer.

USING YOUR CARD/FEATURES

The maximum amount that can be spent on your Card per day is \$10,000.00. The maximum value of your Card is restricted to \$10,000.00. You may use your card to purchase or lease goods or services everywhere Visa debit cards, Interlink cards, or STAR cards are accepted as long as you do not exceed the value available on your Card Account. Some merchants do not allow cardholders to conduct split transactions where you would use the Card as partial payment for goods and services and pay the remainder of the balance with another form of legal tender. If you wish to conduct a split transaction and it is permitted by the merchant, you must tell the merchant to charge only the exact amount of funds available on the Card to the Card. You must then arrange to pay the difference using another payment method. Some merchants may require payment for the remaining balance in cash. If you fail to inform the merchant that you would like to complete a split transaction prior to swiping your Card, your Card is likely to be declined. The Card itself may not be returned to any merchant for a refund, except where required by applicable law. At the time of each purchase using the Card, you will be asked to sign a receipt for the transaction. The dollar amount of the purchase will be deducted from the value associated with the Card. **If you use your Card at an automated fuel dispenser ("pay at the pump"), the merchant may preauthorize the transaction amount up to \$100.00 or more. If your Card is declined, even though you have sufficient funds available, pay for your purchase inside with the cashier. If you use your Card at a restaurant, a hotel, or for similar purchases, the merchant may preauthorize the transaction amount for the purchase amount plus up to 20% or more to ensure there are sufficient funds available to cover tips or incidental expenses incurred. Any preauthorization amount will place a "hold" on your available funds until the merchant sends us the final payment amount of your purchase. Once the final payment amount is received, the preauthorization amount on hold will be removed. It may take up to seven (7) days for the hold to be removed. During the hold period, you will not have access to the preauthorized amount.** Internet, mail, and telephone order purchases may require that we have the zip code of the Card on file. If you have a Personalized Card, we already have your zip code on file. If you have a Non-personalized Card and you wish to make Internet, mail, or telephone order purchases, you will need to go to www.momentumcard.com and enter your zip code prior to performing an Internet, mail, or telephone order transaction. If you use your Card number without presenting your Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if you used the Card itself. For security reasons, we may limit the amount or number of transactions you can make on your Card. Your Card cannot be

redeemed for cash except where required by law. You may not use your Card for online gambling or any illegal transaction. We may refuse to process any Card transaction that we believe may violate the terms of this Agreement or applicable law. Each time you use your Card, you authorize us to reduce the value available in your Card Account by the amount of the transaction and any applicable fees. You are not allowed to exceed the available amount in your Card Account through an individual transaction or a series of transactions. Nevertheless, if a transaction exceeds the balance of the funds available on your Card, you shall remain fully liable to us for the amount of the transaction and any applicable fees. We may deduct any amount that you owe us from any current or future funds associated with this or any other Card you activate or maintain. You do not have the right to stop payment on any purchase or payment transaction originated by use of your Card. You may not make preauthorized regular payments from your Card account. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold for that amount of funds for up to thirty (30) days. All transactions relating to car rentals may result in a hold for that amount of funds for up to sixty (60) days.

NON-VISA DEBIT TRANSACTIONS

New procedures are in effect that may impact you when you use your Card at certain merchant locations. In the past, transactions have been processed as Visa debit transactions unless you entered a PIN. Now, if you do not enter a PIN, transactions may be processed as either a Visa debit transaction or as a STAR transaction. Merchants are responsible for and must provide you with a clear way Fee Schedule of choosing to make a Visa debit transaction if they support the option. Please be advised that should you choose to use the STAR network when making a transaction without a PIN, different terms may apply. Certain protections and rights applicable only to Visa debit transactions as described in this Agreement will not apply to transactions processed on the STAR network. Please refer to the paragraph labeled "Your Liability for Unauthorized Transfers" for a description of these rights and protections applicable to Visa debit and non-Visa debit transactions. To initiate a Visa debit transaction at the POS, swipe your Card through a POS terminal, sign the receipt, or provide your Card number for a mail order, telephone, or Internet purchase. To initiate a non-Visa debit transaction at the POS, enter your PIN at the POS terminal or provide your Card number after clearly indicating a preference to route your transaction as a non-Visa debit transaction for certain bill payment, mail order, telephone, or Internet purchases.

RETURNS AND REFUNDS

If you are entitled to a refund for any reason for goods or services obtained with your Card, you agree to accept credits to your Card for such refunds and agree to the refund policy of that merchant. Exchange or return of merchandise purchased in whole or in part with the Card will be governed by the procedures and policies of each merchant and applicable law. At the time of any exchange or return, you should present both the merchandise receipt and the Card. If you receive a credit, the credit may not be added to the available funds on the Card for seven (7) business days. The Issuer, Visa U.S.A. Inc., ITC Financial Licenses, Inc. or their respective affiliates, employees or agents, including, but not limited to, Interactive Communications International, Inc. and its affiliates, employees and agents are not responsible for the delivery, quality, safety, legality or any other aspects of goods or services that you purchase from others with a Card or any damages resulting directly or indirectly from the use of the Card. All such disputes must be addressed and handled directly with the merchant from whom those goods or services were provided.

CARD REPLACEMENT

If you need to replace your Card for any reason, please contact us at 1-855-721-5041 to request a replacement Card. There are certain restrictions that must be met before we can replace your Card in certain circumstances. You will be required to provide personal information which may include your Card number, full name, transaction

history, copies of accepted identification, etc. We reserve the right to require an affidavit signed by you and conduct an investigation into the validity of any request. There is a fee for replacing your Card in the amount shown in the Agreement captioned "Fee Schedule", which will be deducted from the balance associated with the new Card (Please Note: There is no fee to replace an expired card.) It may take up to fifteen (15) days to process a request for a replacement Card although we will endeavor to provide you with a replacement Card on as timely a basis as is reasonable under the circumstances.

EXPIRATION

The Card plastic is valid through the expiration date shown on the front of the Card, except where prohibited or modified by applicable law. The funds associated with the Card do not expire. You will not be able to use your Card after the expiration date; however, you may request a replacement Card at no cost to you by following the procedures in the paragraph labeled "Card Replacement".

TRANSACTIONS MADE IN FOREIGN CURRENCIES

If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the amount deducted from your funds will be converted by Visa into an amount in the currency of your Card. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate Visa itself receives or the government-mandated rate in effect for the applicable central processing date. If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the Issuer may assess a foreign currency conversion fee of 3% of the transaction amount and will retain this amount as compensation for its services. Transactions made outside of the 50 United States and the District of Columbia are also subject to this conversion fee even if they are completed in U.S. currency.

RECEIPTS

You should get a receipt at the time you make a transaction using your Card. This may be your only record of the transaction. You agree to retain, verify, and reconcile your transactions and receipts.

CARD ACCOUNT BALANCE/PERIODIC STATEMENTS

You are responsible for keeping track of your Card Account available balance. Merchants generally will not be able to determine your available balance. It is important to know your available balance before making any transaction. You may obtain information about the amount of money you have remaining in your Card Account by calling 1-855-721-5041. This information, along with a sixty (60) day history of Card Account transactions, is also available online at www.momentumcard.com. You also have a right to obtain a sixty (60) day written history of Card Account transactions by writing us at Paper Statement Request, Cardholder Services, 401 Garbally Road, Victoria, BC V8T 5M3. However, there is a fee for this service in the amount shown in the Agreement captioned "Fee Schedule" for each paper statement requested. You will not automatically receive paper statements. You agree that these are reasonable procedures for sending and receiving paper statements.

FEE SCHEDULE

All fee amounts will be withdrawn from your Card Account and will be assessed as long as there is a remaining balance on your Card Account, except where prohibited by law. NOTE: Fees assessed to your Card Account balance may bring your Card Account negative. Anytime your Card Account balance is less than the fee amount

being assessed on your Card Account, the balance of your Card Account will be applied to the fee amount. THIS WILL RESULT IN A NEGATIVE BALANCE ON YOUR CARD ACCOUNT. If that occurs, any subsequent deposits or loads into your Card Account will first be applied to the negative balance.

	FLAT FEE	PAY AS YOU GO
Activation Fee	\$10.00 (one-time fee charged at the time a Card is issued to you in-store)	\$10.00 (one-time fee charged at the time a Card is issued to you in-store)
Monthly Fee	\$10.00 (per month)	NO FEE
Load Fee	NO FEE	\$2.00 (per transaction)
Transaction Fee	NO FEE	\$1.00 (per transaction)
In Store Withdrawal Fee	NO FEE	NO FEE
Automated Voice Response Fee	\$0.25 (per transaction)	\$0.25 (per transaction)
Call Center Customer Service Fee	No fee once per month, then \$1.50 (per call)	No fee once per month, then \$1.50 (per call)
ATM Domestic Fee	\$2.00 (per transaction)	\$2.00 (per transaction)
ATM International Fee	\$1.00 per transaction + 3% of the transaction amount	\$1.00 per transaction + 3% of the transaction amount
Foreign Transaction Fee	3% of the transaction amount (per transaction)	\$1.00 + 3% of the transaction amount (per transaction)
Card to Card Transfer Fee	\$5.00 (per transaction)	\$5.00 (per transaction)
Replacement Card Fee	\$5.00 (per transaction)	\$5.00 (per transaction)
Account Cancellation Fee	\$10.00 (charged if a check is issued for funds on your Card Account and Card Account is closed)	\$10.00 (charged if a check is issued for funds on your Card Account and Card Account is closed)
Paper Statement Fee	\$5.00 (per paper statement)	\$5.00 (per paper statement)

If you use an ATM not owned by us for any transaction, including a balance inquiry, you may be charged a fee by the ATM operator even if you do not complete a withdrawal. This ATM fee is a third party fee amount assessed by the individual ATM operator only and is not assessed by us. This ATM fee amount will be charged to your Card.

UNCLAIMED PROPERTY

Applicable law may require us to report to state government authorities any funds remaining with respect to your Card after a certain period of inactivity. In that event, we may try to contact you at the address shown in our records. If we are unable to contact you, we may be required to transfer any funds remaining with respect to your Card to state government authorities as unclaimed property.

CONFIDENTIALITY

We may disclose information to third parties about your Card or the transactions you make:

- (1) Where it is necessary or helpful for completing transactions;
- (2) In order to verify the existence and condition of your Card for a third party, such as merchant;

- (3) To utilize services of third parties and affiliate entities who assist us in providing the Card and related services;
- (4) In order to comply with government agency, court order, or other legal or administrative reporting requirements;
- (5) If you consent by giving us your written permission;
- (6) If you owe us money or there are legal proceedings in connection with your Card, in which case, information may be released to attorneys, accountants, collection bureaus, financial institutions, and others involved in collection, adjustment or settlement;
- (7) To our employees, auditors, affiliates, parent and subsidiary companies, service providers, or attorneys as needed;
- (8) In order to prevent, investigate or report possible illegal activity;
- (9) In order to issue authorizations for transactions on the Card;
- (10) As permitted by applicable law; or
- (11) Otherwise as necessary to fulfill our obligation under this Agreement.

Please see our Privacy Notice, available at https://thebancorp.mybankingservices.com/Global/docs/privacy/001_PrivacyPractices.pdf for further details.

OUR LIABILITY FOR FAILURE TO COMPLETE TRANSACTIONS

If we do not properly complete a transaction from your Card on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (1) If through no fault of ours, you do not have enough funds available on your Card to complete the transaction;
- (2) If a merchant refuses to accept your Card;
- (3) If an ATM where you are making a cash withdrawal does not have enough cash;
- (4) If an electronic terminal where you are making a transaction does not operate properly, and you knew about the problem when you initiated the transaction;
- (5) If access to your Card has been blocked after you reported your Card lost or stolen;
- (6) If there is a hold or your funds are subject to legal or administrative process or other encumbrance restricting their use;
- (7) If we have reason to believe the requested transaction is unauthorized;
- (8) If circumstances beyond our control (such as fire, flood, or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken; or
- (9) Any other exception stated in our Agreement with you or by applicable law.

YOUR LIABILITY FOR UNAUTHORIZED TRANSFERS

Contact us at once if you believe your Card has been lost or stolen. Telephoning is the best way to minimize your possible losses. If you believe your Card has been lost or stolen, or that someone has transferred or may transfer money from your Card Account without your permission, call us at 1-855-721-5041. Under Visa U.S.A. Inc. Operating Regulations, your liability for unauthorized Visa debit transactions on your Card Account is \$0.00 if you notify us within two (2) business days and you are not grossly negligent or fraudulent in the handling of your Card. This reduced liability does not apply to PIN transactions not processed by Visa or ATM cash withdrawals. If you notify us within two (2) business days of any unauthorized transactions, you can lose no more than \$50.00 if someone used your Card without your permission. If you do not notify us within two (2) business days after you learn of the loss or theft of your Card and we can prove that we could have stopped someone from using your Card without your permission if you had promptly notified us, you could lose as much as \$500.00. Also, if you

become aware of and/or your statement shows transactions that you did not make, notify us at once following the procedures stated in the paragraph labeled "Information About Your Right to Dispute Errors". If you do not notify us in writing within sixty (60) days after you become aware of the transaction and/ or after the statement was made available to you, you may not get back any value you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the value if you had notified us in time. If your Card has been lost or stolen, we will close your Card Account to keep losses down. Upon your request, we will issue you a replacement Card.

OTHER MISCELLANEOUS TERMS

Your Card and your obligations under this Agreement may not be assigned. We may transfer our rights under this Agreement. Use of your Card is subject to all applicable rules and customs of any clearinghouse or other association involved in transactions. We do not waive our rights by delaying or failing to exercise them at any time. If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this Agreement shall not be affected. This Agreement will be governed by the law of the State of South Dakota except to the extent governed by federal law.

AMENDMENT AND CANCELLATION

We may amend or change the terms and conditions of this Agreement at any time by posting the amended Agreement on our website at www.momentumcard.com, and any such amendment shall be effective upon such posting to that website. The current Agreement is available at www.momentumcard.com. However, if the change is made for security purposes, we can implement such change without prior notice. We may cancel or suspend your Card or this Agreement at any time. You may cancel this Agreement by returning the Card to us. Your cancellation of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to termination. In the event that your Card Account is cancelled, closed, or terminated for any reason, you may request the unused balance to be returned to you via a check to the mailing address we have in our records. There is a fee for this service. Please refer to the fee schedule above. The Issuer reserves the right to refuse to return any unused balance amount less than \$1.00. Any request for a return of funds shall be processed within a reasonable period of time after your request.

INFORMATION ABOUT YOUR RIGHT TO DISPUTE ERRORS

In case of errors or questions about your electronic transactions, call 1-855-721-5041 or write to Cardholder Services, 401 Garbally Road, Victoria, BC V8T 5M3 if you think your statement or receipt is wrong or if you need more information about a transaction listed on the statement or receipt. We must allow you to report an error until sixty (60) days after the earlier of the date you electronically access your Card Account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at 1-855-721-5041 or writing us at Cardholder Services, 401 Garbally Road, Victoria, BC V8T 5M3. You will need to tell us:

1. Your name and Card Account number
2. Why you believe there is an error, and the dollar amount involved
3. Approximately when the error took place

If you provide this information orally, we may require that you send your complaint or question in writing within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we hear

from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your Card within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes to complete the investigation. If you do not have federal payments (for example, Social Security benefits, tax refunds or other government payments) deposited to your Card Account, we may not credit your Card. If we ask you to put your complaint or question in writing and you do not provide it within ten (10) business days, we may not credit your Card. For errors involving new Cards, POS transactions, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. We will tell you the results within three (3) business days after completing the investigation. If we decide that there was no error, we will send you a written explanation. Copies of the documents used in the investigation may be obtained by contacting us at the telephone number or address listed at the beginning of this section. If you need more information about our error resolution procedures, call us at 1-855-721-5041 or visit www.momentumcard.com.

NO WARRANTY OF AVAILABILITY OR UNINTERRUPTED USE

From time to time the Card services may be inoperative, and when this happens, you may be unable to use your Card or obtain information from your Card, including the available balance of funds associated with your Card. Please notify us at the Customer Service number stated below if you have any problems using your Card. You agree that the Issuer, Visa U.S.A. Inc., ITC Financial Licenses, Inc., and their respective affiliates, employees, or agents, including, but not limited to, Interactive Communications International, Inc. and its affiliates, employees and agents, are not responsible for any interruption of service.

WEBSITE AND AVAILABILITY

Although considerable effort is expended to make our website and other operational and communications channels available around the clock, we do not warrant these channels to be available and error free every minute of the day. You agree that we will not be responsible for temporary interruptions in service due to maintenance, website changes, or failures, nor shall we be liable for extended interruptions due to failures beyond our control, including but not limited to the failure of interconnecting and operating systems, computer viruses, forces of nature, labor disputes and armed conflicts. You agree to act responsibly with regard to our website and its use. You will not violate any laws, interfere or disrupt computer networks, impersonate another person or entity, violate the rights of any third party, stalk, threaten or harass anyone, gain any unauthorized entry, or interfere with the website's systems and integrity. We shall not bear any liability, whatsoever, for any damage or interruptions caused by any "computer viruses" that may affect your computer or other equipment. We advise the regular use of a reputable and readily available virus screening and prevention software.

ENGLISH LANGUAGE CONTROLS

Any translation of this Agreement is provided for your convenience. The meanings of terms, conditions and representations herein are subject to definitions and interpretations in the English language. Any translation provided may not accurately represent the information in the original English.

CUSTOMER SERVICE

For customer service or additional information regarding your Card, please contact us at: Momentum® Visa Prepaid Card 401 Garbally Road Victoria, BC V8T 5M3 1-855-721-5041 or 404-806-7672 outside North America Customer Service agents are available to answer your calls: Monday through Friday, 4 a.m. to 11 p.m. PST; Saturday and Sunday, 5 a.m. to 10 p.m. PST (holidays excluded).

TELEPHONE MONITORING/RECORDING

You agree that from time to time, without further notice to you, we may monitor and/or record telephone calls and electronic communications between you and us to assure the quality of our customer service or as required by applicable law.

NO WARRANTY REGARDING GOODS OR SERVICES AS APPLICABLE

We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase with your Card.

SECTION HEADINGS

Section headings in this Agreement are for convenience of reference only, and shall not govern the interpretation of any provision of this Agreement.

ENTIRE UNDERSTANDING

This Agreement sets forth the entire understanding and agreement between you and us, whether written or oral, with respect to its subject matter and supersedes any prior or contemporaneous understandings or agreements with respect to their subject matter.

ARBITRATION

Any claim, dispute, or controversy ("Claim") between you and us arising out of or relating in any way to this Agreement, your Card, your purchase of the Card, your usage of the Card, or transactions on the Card, no matter how described, pleaded or styled, shall be finally and exclusively resolved by binding individual arbitration conducted by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules in your state of residence at a location that is reasonably convenient for both parties.

ARBITRATION OF YOUR CLAIM IS MANDATORY AND BINDING. NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM THROUGH A COURT. IN ARBITRATION, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO A TRIAL BY JUDGE OR JURY.

We will pay the initial filing fee to commence the arbitration.

You and we will have every remedy available in arbitration as you and we would have from a court and will be entitled to reasonable discovery. All determinations as to the scope, interpretation, enforceability and validity of this Agreement shall be made finally and exclusively by the arbitrator. The arbitrator's award will be binding and final. Judgment on the arbitration award may be entered in any court having jurisdiction.

NO CLASS ACTION, OR OTHER REPRESENTATIVE ACTION, OR PRIVATE ATTORNEY GENERAL ACTION, OR JOINDER OR CONSOLIDATION OF ANY CLAIM WITH A CLAIM OF ANOTHER PERSON SHALL BE ALLOWABLE IN ARBITRATION.

This arbitration provision shall survive: (i) the termination of this Agreement; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of your Card, or any amounts owed on your Card, to any other person or entity. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. Any different agreement regarding arbitration must be agreed to in writing. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

IF YOU DO NOT AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT, DO NOT ACTIVATE OR USE THE CARD, SAVE YOUR RECEIPT AND CALL US AT 1-855-721-5041 TO CANCEL YOUR CARD AND TO REQUEST A REFUND.

This Cardholder Agreement is effective 07/2014.

U.S. Money Prepaid MasterCard[®]
 Schedule A – Cardholder Fees and Transaction Limits

Description	Amount	When You Are Charged	How to Minimize or Avoid the Fee
Fees for Getting Started			
One-Time Account Setup (non-refundable)	\$5.95	Upon Card activation.	
Fees for Recurring Services			
Monthly Fee	No Monthly Fee with \$500 or more in direct deposit(s); otherwise \$3.00 (see details to right)	On the last day of your first statement cycle after Card activation and the last day of each statement cycle thereafter. The monthly fee will be refunded to your Card in full on the last day of each statement cycle if you have had one or more direct deposits totaling \$500 or more credited to your Card during the statement cycle.	Enroll in direct deposit with your employer or government benefits provider and make sure your direct deposits each statement cycle total \$500 or more.
Additional Monthly Fee for Secondary Card	\$2.95	On the last day of your first statement cycle after activation of the secondary card and the last day of each statement cycle thereafter.	
Fees for Spending/Transferring Money in U.S.			
PIN Purchase	\$0.50	Each time you make a point-of-sale purchase by selecting "debit" and entering your Personal Identification Number ("PIN").	You can make a signature purchase at no charge by selecting "credit" at checkout and signing for your purchase (if requested to do so by the merchant).
Card-to-Card Transfer (from your Card to another Cardholder, Card to Card was previously referred to as Account to Account)	\$1.50	Each time you transfer funds from your Card to another Cardholder on our system.	
ACH Debit	\$4.95	Each time we receive an ACH debit to be posted to your Card.	Make payments using your 16-digit Card number rather than the Bank's routing number and your 13-digit account number.
Fees for Getting Cash in U.S.			
ATM Cash Withdrawal	\$1.50	Each time you withdraw cash from an ATM that does NOT display the MoneyPass [®] logo. You may also be charged an additional fee/surcharge by the ATM operator or any network used to complete the transaction. Checking your balance prior to conducting a withdrawal may also result in a Balance Inquiry Fee (see below).	Withdraw cash at no charge using an ATM displaying the MoneyPass [®] logo (locate them at www.moneypass.com) or request cash back at point-of-sale using your PIN (PIN Purchase Fee applies). Also, make payments using your Card rather than cash when possible.
Bank Teller Cash Withdrawal	\$4.95	Each time you request a cash withdrawal from a bank teller.	Withdraw cash at no charge using an ATM displaying the MoneyPass [®] logo (locate them at www.moneypass.com) or request cash back at point-of-sale using your PIN (PIN Purchase Fee applies). Also, make payments using your Card rather than cash when possible.
Fees for Adding Money			
Cash Load Through GreenDot or Western Union Reload Locations or Using the GreenDot MoneyPak [®]	Varies by location; approx. \$4.95 per load	Third party reload networks (e.g. GreenDot and Western Union) may assess a fee for each load. Visit our customer service website shown on the back of your Card to find a list of reload network locations and be sure to ask about the cost before conducting the load.	Direct deposit your paycheck or government benefits to your Card at no charge. Obtain your direct deposit form online or by calling us. You may also make a cash load at no charge through any retail location that sells the U.S. Money Card.
Other Fees			
ATM Balance Inquiry	\$1.00	This fee is charged each time you request your Card balance using an ATM regardless of whether you also conduct a cash withdrawal.	You can conveniently track your balance at no charge online, by calling us, or by enrolling in SMS balance alerts
Mailed Statement	\$1.95	Each time you request this service if requested more than 2 times every 6 months.	You can view and print your account transaction history online at no charge.
Secondary/Replacement Card	\$4.95	Each time you request this service if the replacement/secondary Card is requested prior to Card expiration date.	Take good care of your Card and always keep it in your possession. You will not be assessed this fee if your Card was stolen
Expedited Delivery Fee	\$20.00 - \$40.00	Expedited shipping is available upon request at an additional cost. The cost will vary based on delivery location and the type of expedited shipping requested	Visit your local Check Into Cash location for a replacement card.

Description	Amount	When You Are Charged	How to Minimize or Avoid the Fee
Fees for Declined Transactions and Transactions that Result in a Negative Card Balance			
Purchase Decline (Signature or PIN)	\$0.50	Each time a point-of-sale or online purchase is declined for insufficient funds.	Keep track of your balance and only attempt transactions in amounts less than or equal to the available balance on the Card. You can conveniently track your balance at no charge by visiting us online, by calling us, or enrolling in SMS balance alerts. Unless you obtained your Card through your employer or you receive electronic deposits of Federal benefits to your Card an Insufficient Funds (NSF) Fee will be charged for Transactions that cause the available balance on your card to go negative, including ACH Debit Transactions and any purchase Transactions where the retailer or merchant does not request authorization and the resulting charge results in a negative balance.
ATM Decline	\$1.00	Each time an ATM cash withdrawal request is declined for insufficient funds.	
ACH Decline	\$14.95	Each time an ACH debit transaction is declined as unauthorized or insufficient funds.	

Fees for U.S. Money Checks			
Check Purchase Fee (per pack of 3)	\$3.95	Each time you request a pack of U.S. Money Checks from us. Per pack of 3 up to 18 checks.	
Check Authorization	\$1.50	Each time you are issued a U.S. Money check authorization code.	
Unauthorized Check Presentment	\$14.95	Each time an unauthorized U.S. Money check is presented to us for payment.	
Check Stop Payment/Redeposit of Voided Check Funds	\$19.95	Each time you request a stop payment on a U.S. Money check or voided check funds are re-credited to your account.	

Fees for Spending Money Outside the U.S.			
International Signature Purchase	\$1.00	Each time you select "credit" and sign for a purchase outside the U.S.	
International PIN Purchase	\$1.00	Each time you make a purchase outside the U.S. by selecting "debit" and entering your PIN.	
International ATM Cash Withdrawal	\$3.00	Each time you use an ATM outside the U.S. to withdraw cash. You may also be charged a fee by the ATM operator or any network used to complete the transaction (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).	
Currency Conversion	2% of transaction amount	Each time you obtain funds or make a purchase outside the U.S.	

Transaction Limits	
Purchase Limits	\$5,000/DAY
Cash Withdrawal Limits	\$2,000/DAY
Load Limit	\$10,000/DAY
Maximum Card Balance	\$10,000
Card to Card Transfer Limit	\$5,000/DAY

CARDHOLDER AGREEMENT

IMPORTANT- PLEASE READ CAREFULLY

FOR QUESTIONS OR ASSISTANCE, PLEASE CALL THE CUSTOMER SERVICE TOLL-FREE NUMBER (1-877-849-3249) PRINTED ON THE BACK OF YOUR BRINK'S PREPAID MASTERCARD®.

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INTRODUCTION

Terms and Conditions/Definitions for the Brink's Prepaid MasterCard

This document constitutes the agreement ("**Agreement**") outlining the terms and conditions under which the Brink's Prepaid MasterCard and the Brink's Prepaid MasterCard Virtual Account have been issued by Bofl Federal Bank. "**Card Account**" means the records we maintain to account for the transactions made with your Card or Virtual Account. "**Account Number**" means the 14-digit number used to identify your Card Account. "**Card**" means the Brink's Prepaid MasterCard issued to you by Bofl Federal Bank. "**Card Number**" is the 16-digit number embossed on your Card. "**Virtual Account**" means a temporary access device issued to you by Bofl Federal Bank that you may elect to obtain to access your Card Account for telephone or online transactions, without needing to present your Card. "**Issuer, "we," "us," and "our"** means Bofl Federal Bank, of San Diego, California, Member FDIC. "**NetSpend**" refers to NetSpend Corporation, the servicer for the Brink's Prepaid MasterCard program and Brink's Prepaid MasterCard Virtual Account program, and its successors, affiliates, or assignees. Any request for a Card or Virtual Account will be processed by NetSpend, acting on behalf of the Issuer, at its offices located in Austin, Texas. NetSpend is a registered agent of the Issuer. "**You, "your," "Cardholder," and "Primary Cardholder,"** refers to the person who submits an initial request for the Card and is authorized to use the Card as provided for in this Agreement. "**Secondary Cardholder**" refers to the person or persons who have received the Card at the request of the Primary Cardholder and are authorized to use the Card as provided for in this Agreement. In order to become a Cardholder, you must be an individual who can lawfully enter into and form contracts under applicable law in the state in which you reside. Unless it would be inconsistent to do so, words and phrases used in this Agreement should be construed so that the singular includes the plural and the plural includes the singular.

You acknowledge and agree that the value available in your Card Account is limited to the funds that you have loaded into your Card Account or have been loaded into your Card Account on your behalf. By accepting and using your Card or Virtual Account, you agree to be bound by the terms and conditions contained in this Agreement. You and any Secondary Cardholder(s) agree to sign the back of each respective Card(s) immediately upon receipt.

The expiration date of your Card is identified on the front of the Card. The expiration date of any Virtual Account you have requested is described below in the section labeled "*Virtual Account.*" The Card is a prepaid card. The Card is not a gift card, nor is it intended to be used for gifting purposes. The Card is not a credit card. The Card is not for resale. You are the direct beneficiary of the funds loaded to your Card Account. The funds in your Card Account will be FDIC insured upon receipt by the Issuer, provided your Card is registered with us (for more information, see section labeled "*Activation/Registration*"). You will not receive any interest on your funds in your Card

Account. The Card will remain the property of the Issuer and must be surrendered upon demand. The Card and Virtual Account are nontransferable and may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. The Card and Virtual Account are not designed for business use, and we may close your Card Account if we determine that it is being used for business purposes. We may refuse to process any transaction that we believe may violate the terms of this Agreement.

Your Card Account does not constitute a checking or savings account and is not connected in any way to any other account, except as described in the section labeled “*Virtual Account*” or as may otherwise be indicated in any other account agreements you have entered into with us.

Write down your Card Number and the Customer Service phone number provided in this Agreement on a separate piece of paper in case your Card is lost, stolen, or destroyed. Keep the paper in a safe place. Please read this Agreement carefully and keep it for future reference.

OPENING A CARD ACCOUNT (IDENTIFICATION VERIFICATION)

The USA PATRIOT Act is a federal law that requires all financial institutions to obtain, verify, and record information that identifies each person who opens a Card Account.

What this means for you: When you open a Card Account, we will ask for your name, street address, date of birth, and other information that will allow us to reasonably identify you. We may also ask to see your driver’s license or other identifying documents at any time. The same identification verification requirements apply to each Secondary Cardholder, if any are designated by you.

BUSINESS DAYS

Our business days are Monday through Friday, excluding federal holidays, even if we are open. Any references to “days” found in this Agreement are calendar days unless indicated otherwise.

ADDRESS OR NAME CHANGES

You are responsible for notifying us of any change in your physical address, mailing address, email address, text message address, or your name, no later than two (2) weeks after said change. Any notice of change of address or name required by this Agreement may be provided to us via email at Contact@BrinksMoney.com, by telephone at 1-877-849-3249, or by mail to: Brink’s Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136.

We will attempt to communicate with you only by use of the most recent contact information you have provided to us. You agree that any notice or communication sent to you at an address noted in our records shall be effective unless we have received an address change notice from you.

AUTHORIZED USERS

You are responsible for all authorized transactions initiated and fees incurred by use of your Card Account. If you permit another person to have access to your Card, Virtual Account, Card Number or Personal Identification Number (“**PIN**”), we will treat this as if you have authorized such use and you will be liable for all transactions and fees incurred by those persons. You must notify us to revoke permission for any person you previously authorized to use your Card, Virtual Account, Card Number or PIN. If you notify us to cancel another person’s use of your Card, Virtual Account, Card Number or PIN, we may close your Card Account and issue a new Card to you with a different number. You are wholly responsible for the use of the Card Account according to the terms and conditions of this Agreement.

SECONDARY CARDHOLDER

You may request an additional Card for a Secondary Cardholder. The maximum number of such additional Cards is two (2). You must notify us to revoke permission for any Secondary Cardholder you previously authorized to use the Card. If you notify us to revoke the Secondary Cardholder’s use of the Card, we may close your Card Account and issue a new Card to you with a different number. You remain liable for any and all use of any additional Card(s) you authorize.

ACTIVATION/REGISTRATION

Both the Primary Cardholder and Secondary Cardholder must activate and register a Card before it can be used. Your Card Account may not have full functionality (*e.g.*, no international transactions and no Account-to-Account transfers), nor will you be able to access Card Account funds exceeding the dollar value established by either federal regulations and/or the Issuer (the “**Excess Funds**”) or reload your Card Account until your Card has been successfully registered. You may activate and register your Card by calling 1- 877-849-3249 or by visiting www.BrinksPrepaidMasterCard.com. You will need to provide personal information in order for us to verify your identity and the identity of any Secondary Cardholder. If we cannot successfully complete the activation/registration process, you will be entitled to receipt of any Excess Funds remaining in the Card Account by way of a Check Refund, for which the fee, disclosed in the section labeled, “*Fee Schedule*,” will be waived. We may, from time-to-time offer other no-cost methods through which Excess Funds can be made available to you.

PERSONAL IDENTIFICATION NUMBER

You will not receive a PIN with your Card Account. However, you will receive a PIN once you have registered your Card with your personal information. Only one (1) PIN will be issued for each Card Account. Your PIN can be used to obtain cash (see section labeled “*Cash Access*”) or to make purchases at any Point-of-Sale (“**POS**”) device that bears the MasterCard®, Cirrus®, or PULSE® acceptance mark. You should not write or keep your PIN with your Card. Never share your PIN with anyone. When entering your PIN, be sure it cannot be observed by others and do not enter your PIN into any terminal that appears to be modified or suspicious. If you believe that anyone has gained unauthorized access to your PIN, including a Secondary Cardholder, you should advise us immediately by following the procedures described in the section labeled “*Your Liability for Unauthorized Transfers.*”

To register your Card, see the section labeled “*Activation/Registration.*”

CASH ACCESS

With your PIN, you may use your Card to obtain cash from any Automated Teller Machine (“**ATM**”) or any POS device, as permissible by a Merchant, bearing the MasterCard®, Cirrus®, or PULSE® acceptance mark. ATM transactions are treated as cash withdrawal transactions. Any cash withdrawn from an ATM terminal, POS device or through a participating bank or NetSpend Reload Network location (an “**Over the Counter Cash Withdrawal**”) will be subject to the limitations set forth in the section below labeled “*Using Your Card and Virtual Account/Limitations*”). ATM withdrawals may also be subject to varying daily limits at the ATM owner’s discretion. A fee may be associated with the use of your Card to obtain cash. For information about the fee, see the section labeled “*Fee Schedule.*”

LOADING YOUR CARD ACCOUNT

You may add funds to your Card Account, called “**value loading**,” at any time. Your initial value load must be at least \$10.00. The minimum dollar value of any subsequent value loads will be subject to the terms established by the individual reload location (see (a) in the following paragraph). There is no limit on the number of times you may value load your Card Account in a day, but the maximum cumulative amount of value loads is currently \$7,500.00 over any 24-hour period. The calculation of this maximum amount will take into consideration all similar transactions made with any other Card Account(s) you may have with us, whether you are a Primary Cardholder or a Secondary Cardholder.

You may value load your Card Account: (a) using in-store cash value load transactions conducted through any member of the NetSpend Reload Network (see below in this section for more information about the network); (b) by arranging to have all or a portion of your paycheck, government benefits payment, tax refund check, or other electronic funds transfer direct deposited to your Card Account using the Automated Clearing House (“ACH”) system (“**Direct Deposit**” or “**ACH Deposit**”). In order to receive Direct Deposit value loads you must provide each of your payment providers with Issuer’s routing number and your assigned Account Number (see below for details about routing information); and (c) by arranging for the transfer of funds originating from: (i) a financial institution located in the United States; (ii) another Cardholder; and/or (iii) another Card Account. There may be fees associated with these methods of value loading. For information about the fees, see the section labeled “*Fee Schedule.*”

Personal checks, cashiers’ checks, and money orders sent to the Issuer are not acceptable forms of value loading. All checks and money orders sent to the Issuer for Card Account loading will be returned unless your Card Account has a negative balance at the time such check or money order is received, in which case the Issuer may in its discretion choose to apply the check or money order proceeds to the negative balance owed.

A NetSpend Reload Network Location Finder service is available by visiting www.loadnetspend.com; by enrolling in and using our Anytime Alerts™ short message service (*typically referred to as an “SMS” message*); or by calling 1-877-849-3249. There may be a fee associated with calling Customer Service. For information about the fee, see the section labeled “*Fee Schedule.*”

USING YOUR CARD AND VIRTUAL ACCOUNT/LIMITATIONS

Card Account Access: Subject to the limitations set forth in this Agreement, you may use your Card to (1) withdraw cash from your Card Account (see section labeled “*Cash Access*”); (2) load funds to your Card Account (see section labeled “*Loading Your Card Account*”); (3) transfer funds between your Card Accounts whenever you request; (4) transfer funds from your Card Account to another NetSpend cardholder account; (5) purchase or lease goods or services wherever MasterCard debit cards are accepted, and (6) pay bills directly from your Card Account in the amounts and on the days you request. Some of these services may not be available at all terminals. You may also use your Virtual Account to purchase or lease goods or services or make payments by telephone or online, without presenting your Card (see the section labeled “*Virtual Account*”). There may be fees associated with some of these transactions. For information about the fees, see the section labeled “*Fee Schedule.*”

Limitations on frequency of transfers: For security reasons, we may limit the amount or number of transactions you can make with your Card or Virtual Account.

Limitations on dollar amounts of transfers: (1) When using a registered Card, you may make a total of \$940.00 in ATM withdrawals during any 24-hour period. (2) No individual transfer made with your Card or Virtual Account may exceed \$4,999.00 (including cash withdrawals, purchases, value loads, bill payment and account-to-account transfers). (3) The maximum cumulative amount of value loads may not exceed \$7,500.00 over any 24-hour period. (4) The maximum value of your Card Account is restricted to \$15,000.00 at any point in time. We will determine any maximum values by aggregating the activity and value of all Card Accounts you may have with us, whether you are a Primary Cardholder or a Secondary Cardholder.

Each time you use your Card or Virtual Account, you authorize us to reduce the value available in your Card Account by the amount of the transaction and any applicable fees. You may not exceed the available amount in your Card Account through an individual transaction or a series of transactions – unless we decide, in our sole discretion, to approve such transaction(s) because you have qualified for the Overdraft Protection Service. If you do not qualify for the Overdraft Protection Service (defined in more detail below), and any transaction(s) exceeds the balance of the funds available in your Card Account, you shall remain fully liable to us for the amount of the transaction(s) and any applicable transaction fee(s). You agree to pay us promptly for the negative balance. If you have not added sufficient funds to your Card Account to cover the negative balance within sixty (60) days of its creation, **we will have the right to cancel your Card Account and pursue collection, including the right to collect funds, equal to or less than the negative balance, from any other Card Account(s) you may have with us.** In all instances described above, loads to your Card Account may be made via Direct Deposit or any of the other load methods described in this Agreement.

If you do not have enough funds available in your Card Account, you can instruct the Merchant to charge a part of the purchase to the Card and pay the remaining amount with cash or another card. These are called “split transactions.” Some Merchants do not allow cardholders to conduct split transactions. If you wish to conduct a split transaction and it is permitted by the Merchant, you must tell the Merchant to charge only the exact amount of funds available in your Card Account to the Card. You must then arrange to pay the difference using another payment method. Some Merchants may require payment for the remaining balance in cash. If you fail to inform the Merchant that you would like to complete a split transaction prior to swiping your Card, your Card is likely to be declined.

If you use your Card at an automated fuel dispenser (“pay at the pump”), the purchase may be preauthorized for a transaction amount of up to \$100.00, or more. If your Card is declined, even though you have sufficient funds available, you should pay for your purchase inside with the cashier. If you use your Card at a restaurant, a hotel, for a car rental purchase, or for similar purchases, the purchase may be preauthorized for a transaction amount representing the purchase amount plus up to 20% more to ensure there are sufficient funds available to cover tips or incidental expenses incurred. Any

preauthorized amount will result in the placement of a “hold” on your available funds until the Merchant tells us the final payment amount of your purchase. Once we know the final payment amount, the preauthorized amount on hold will be removed. If the Merchant does not tell us the final payment amount, the preauthorized amount on hold will remain in place for up to thirty (30) days. During a hold period, you will not have access to the preauthorized amount

If you use your Card Number without presenting your Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if you used the Card itself (see the section labeled “*Virtual Account*” for additional information about how to obtain and use a Virtual Account).

You may not use your Card Number or the Issuer’s routing number and your assigned Account Number in connection with the creation and/or negotiation of any financial instruments such as checks, which we have not authorized.

Your Card cannot be redeemed for cash. You may not use your Card or Virtual Account for online gambling or any illegal transaction.

You do not have the right to stop payment on any purchase or payment transaction originated by use of your Card or Virtual Account, except as otherwise permitted in this Agreement. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold (see the section labeled “*Returns and Refunds*,” in addition to previous information addressed in this section).

VIRTUAL ACCOUNT

To purchase or lease goods or services or make payments by telephone or online, without needing to provide your actual Card, you may request up to three (3) active Virtual Accounts. Each Virtual Account consists of a 16-digit account number, a 3-digit security code, and an expiration date.

Each Virtual Account expires one year from the last day of the calendar month during which the Virtual Account was created. For example, if a Virtual Account is created on September 30, 2013, its expiration date is September 30, 2014.

When you use your Virtual Account without presenting your Card, the legal effect will be the same as if you used the Card itself. You must first register your Card with us before you can request a Virtual Account (see the section labeled “*Activation/Registration*”).

HOW TO QUALIFY FOR AN UPGRADE TO A BRINK'S PREFERRED CARD ACCOUNT

To qualify for an upgrade to a Brink's Preferred Card Account, your Card Account must receive a total of \$500.00 in Direct Deposit funds within one (1) calendar month. Once you have met the qualification requirement, your Card Account will be automatically upgraded to a Brink's Preferred Card Account and you will have access to special Card Account benefits.

Brink's Preferred Card Account benefits include a discounted optional purchase transaction fee plan (the "**Preferred Fee Plan**"); a purchase buffer of up to \$10.00 (the "**Purchase Cushion**"); and access to the Savings Program (the "**Savings Account**"). For information about the Preferred Fee Plan, see the section labeled "*Fee Schedule*." For information about the Purchase Cushion, see the sectioned labeled "*Purchase Cushion and Optional Overdraft Protection*." For information about how to open a Savings Account, visit www.BrinksPrepaidMasterCard.com.

PURCHASE CUSHION AND OPTIONAL OVERDRAFT PROTECTION

The features of the Purchase Cushion and the optional Overdraft Protection Service are described below.

IMPORTANT - The Purchase Cushion and the Overdraft Protection Service are SEPARATE features. A Cardholder may NOT receive the benefits of the Purchase Cushion and the Overdraft Protection Service at the same time.

(A) How the Purchase Cushion Works:

The Purchase Cushion is a special feature available exclusively to Cardholders who have qualified for an upgrade to a Brink's Preferred Card Account. For information about how to qualify for an upgrade to a Brink's Preferred Card Account, please see the section above labeled "*How to Qualify for an Upgrade to a Brink's Preferred Card Account*." As described above in the section labeled "*Using Your Card and Virtual Account/Limitations*," you generally do not have the right to make transactions or incur fees in amounts exceeding the available balance of your Card Account. We reserve the right to deny any transaction if available funds in your Card Account are insufficient to cover any transaction, fees, or other charges.

However, as a non-contractual courtesy, and in our sole discretion, upon qualifying for an upgrade to the Brink's Preferred Card Account, we may from time-to-time approve purchase transactions that you request that create up to a \$10.00 negative balance in your Card Account. We refer to this feature as the Purchase Cushion. You will not be assessed any fees for Purchase Cushion coverage.

If you meet our eligibility requirements, we may authorize negative balances resulting from Personal Identification Number (“PIN”)-based and signature-based transactions initiated using your Card or Virtual Account. ATM or ACH debit transactions initiated using the Issuer’s routing number and your assigned Card Account number are not eligible for Purchase Cushion coverage. You may receive only one (1) \$10.00 negative balance allowance at a time. Negative balances are approved at our discretion on a per transaction basis. It is important to keep track of the value in your Card Account because it will be your responsibility to determine if you have incurred a negative balance.

If you make a transaction that creates a negative balance in your Card Account, you agree that within thirty (30) days of its creation you will add sufficient funds to your Card Account to cover the negative balance so that your Card Account has a zero or positive balance, or that you will otherwise immediately pay such an amount to us in full upon demand. If after thirty (30) days you have not added sufficient funds to cover your negative balance, your Card Account will remain open to receive credits and loads, which will automatically be applied to your negative balance before they are available to you; however, you will not be able to make any transactions using your Card or Virtual Account until your Card Account has a positive balance, *i.e.*, sufficient funds to cover the negative balance. If you have not added sufficient funds to your Card Account to cover the negative balance within sixty (60) days of its creation, **we will have the right to cancel your Card Account and pursue collection, including the right to collect funds, equal to or less than the negative balance, from any other Card Account(s) you may have with us.** In all instances described above, loads to your Card Account may be made via Direct Deposit or any of the other load methods described in this Agreement.

Should you voluntarily discontinue use of your Card, you shall remain responsible for the negative balance in your Card Account and agree that any credits or loads made to your Card will be used to offset the value of the negative balance, if any.

You acknowledge that a negative balance in your Card Account does not constitute a contractual open end line of credit. If we permit a negative balance on one or more occasions, we do not thereby obligate ourselves to permit a negative balance on any future occasion, and we may refuse to pay a negative balance for you at any time, even though we may have previously paid negative balances up to the \$10.00 limit for you. We have no obligation to notify you before we approve or decline a transaction that would result in a negative balance in your Card Account. Items will be approved or declined in the order they are received.

(B) How the optional Overdraft Protection Service (the “Service”) Works:

You generally do not have the right to make transactions or incur fees in amounts exceeding the balance of your Card Account; however, as a non-contractual courtesy, the Service is available on your Card Account if you elect to participate (*i.e.*, opt-in) and you have met each of the activation and eligibility requirements described below.

If you choose to participate in the Service, it is that program only that will provide coverage, at our discretion, for any negative balances. If you opt-out of the Service or your participation in the Service ends or is suspended for any reason, and you have continuously used and maintained your Card Account in accordance with the terms of this Agreement, the Purchase Cushion feature may be made available to you at our discretion.

a. Activation and Eligibility

To activate the Service on your Card Account you must take each of the following steps: (1) consent to the delivery of electronic communications and provide a valid email address so that we can contact you if you overdraw your Card Account (see the section labeled "*Delivery of Electronic Communications*" for a description of what giving your consent means); (2) review and accept the terms pertaining to the Service; (3) enroll in the Service (*i.e.*, opt-in); (4) have a positive Card balance at the time of activation; and (5) receive an ACH Deposit of at least \$200.00 to your Card Account every thirty (30) days. The Service will be activated on your Card Account thirty-six (36) days after you receive your first ACH Deposit of at least \$200.00 and you satisfy each of the steps described in this paragraph. ACH Deposits received prior to enrollment in the Service will be considered for the purpose of determining your eligibility for activation of the coverage. If you fail to receive an ACH Deposit of at least \$200.00 every thirty (30) days, or your Card Account has a negative balance for more than thirty (30) days, the Service will be immediately deactivated. Your Card Account will remain open to receive credits and loads that will automatically be applied to your negative balance before they are available to you. If the Service is deactivated, you must retake each of the steps described in this paragraph in order to reactivate coverage.

If your Card Account has a negative balance for more than thirty (30) days on three (3) separate occasions or on any one (1) occasion for more than sixty (60) days, the Service will be permanently deactivated. If your Card Account has a negative balance for more than sixty (60) days, we may also elect to close your Card Account at any time thereafter and retain the right to pursue collection of any amounts owed at our sole and absolute discretion.

We will send you email notifications whenever (a) a transaction results in a negative balance in your Card Account; (b) an Overdraft Protection Service Fee is assessed (if applicable) (see Section B, below, for details about the fee), and (c) the Service is activated or deactivated for your Card Account. If you delete your email address from our Cardholder records or withdraw your consent to receive electronic communications from us, the Service will be immediately deactivated. We cannot accept responsibility for any email messages not received by you, or for any delay in the receipt or delivery of any email notifications. If you make your email address available to any other individual, you agree that you are responsible for any release of any Card Account information to such individual. It is your sole responsibility to ensure that the email

address you provide to us is current and accurate. We are not responsible for loss of messages and other consequences if you do not provide an accurate and current email address.

b. Terms of Use

Your participation in the Service is subject to the terms of this Agreement and you may incur fees. The fees for the Service are described here, and in the section labeled “*Fee Schedule.*” The Overdraft Protection Service Fee (if applicable) is applied to certain transactions described below that result in a negative balance (“**Overdraft(s)**”) and is in addition to any other fees ordinarily applicable to a transaction. **The Overdraft Protection Service Fee is \$15.00 for each transaction that overdraws your Card Account by more than \$10.00, up to a maximum of three (3) Overdraft Protection Service Fees per calendar month.** Multiple Overdraft Protection Service Fees may be charged if multiple overdraft transactions are approved on the same day. All transactions are processed in the order in which settlements are received, with the exception of multiple ACH debits received on the same day, which will be processed in order from smallest to largest.

If you are enrolled in the Service and meet our eligibility requirements, we may authorize and pay Overdrafts resulting from PIN- and signature-based purchase transactions initiated using your Card or Virtual Account, telephone-initiated transfers, ATM transactions, and ACH debit transactions that you initiate or authorize someone else to initiate. It is important to keep track of the value in your Card Account because it will be your responsibility to determine if you have overdrawn your Card Account balance, the day and time the Overdraft occurred, and the amount of any Overdraft that is approved.

Once your Card Account has an overdrawn balance greater than \$10.00, you will have twenty-four (24) hours to reload your Card Account with funds sufficient to bring your Card Account to a zero or positive balance without incurring any Overdraft Protection Service Fee(s) (“Grace Period”). If you fail to bring your Card Account back to a zero or positive balance within 24 hours from the time of the first transaction causing an overdrawn balance greater than \$10.00, you will incur an Overdraft Protection Service Fee for each transaction approved after your Card Account balance was greater than \$10.00 overdrawn, subject to the limitations described here.

You will receive an email (and an SMS text message if you are enrolled in Anytime Alerts™) notifying you when an Overdraft occurs. We will tell you where and when the transaction occurred and its amount. If the Overdraft was the first transaction to cause an overdrawn balance greater than \$10.00, we will also tell you when the Grace Period ends for the purpose of avoiding payment of the Overdraft Protection Service Fee(s).

You agree that within thirty (30) days of any Overdraft occurrence on your Card Account you will add funds sufficient to bring your Card Account to a zero or positive balance, or

that you will immediately pay such amount(s) to us in full upon demand. The Service is offered in our sole and absolute discretion as a non-contractual courtesy to you, and as such, we may elect to deactivate the Service for your Card Account at any time, refuse to authorize any transaction that exceeds your Card Account balance, modify eligibility or activation requirements, modify or change the Service Fee, limits, or any other aspect of the Service, and/or terminate the Service in its entirety at any time.

Once you have opted-in to the Service, you may opt-out at any time online or by calling **1-877-849-3249** during normal Customer Service hours. To see the hours of operation, refer to the section labeled "*Customer Service*." Should you choose to opt-out of the Service you remain responsible for any negative balance(s) in your Card Account and agree that any credits or loads made to your Card Account will be used to offset the value of the negative balance(s), if any.

You acknowledge that your participation in the Service and the settlement by us of any transactions exceeding your available Card Account balance does not constitute a contractual open-end line of credit. Our authorization or settlement of any transaction on one or more occasions does not obligate us to authorize or settle future transactions. We may refuse the authorization or settlement of any transaction for you at any time. We have no obligation to notify you before we approve or decline a transaction that would result in an Overdraft in your Card Account.

PREAUTHORIZED DEBITS AND CREDITS

Your assigned Account Number and the Issuer's bank routing number can be used for arranging both direct deposits and recurring payments to merchants, internet service or other utility providers ("**Merchants**"). You may also arrange for recurring payments to Merchants using your Card Number or the bill pay services made available through our third party service providers.

If you have arranged to have Direct Deposits made to your Card Account at least once every sixty (60) days from the same person or company, you can call us at 1-877-849-3249 to find out whether or not the deposit has been made. There may be a fee associated with calling Customer Service. For information about the fee, see the section labeled "*Fee Schedule*."

Right to Stop Payment and Procedure for Doing So:

To stop a recurring payment to a Merchant you have preauthorized to debit your Card Account, you must first contact the Merchant to request the recurring payment be cancelled. If you have arranged for recurring payments to a Merchant using the bill pay services available through our third party service providers, you should first contact the applicable third party service provider to cancel the recurring payment.

If the Merchant or bill payment service provider with whom you have arranged recurring payments from your Card Account is unable or unwilling to stop your payment, you can call us at 1-877-849-3249 or write us at: Brink's Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136 to request a stop on such payment. We must receive your request at least three (3) business days before the payment is scheduled to be made. Such a stop payment request will cancel a single, *i.e.*, one (1), recurring payment. If you want to permanently stop all recurring payments to a specific Merchant then we require you to put your request in writing and get it to us within fourteen (14) days after you tell us you want to stop such payments. There is a fee associated with each stop payment order you give. For information about the fee, see the section labeled "*Fee Schedule.*"

Notice of Varying Amounts:

If the recurring payments you make might vary in amount, the person you are going to pay will tell you the payment date and the amount of the payment ten (10) days before each payment is scheduled to take place. *(You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)*

Liability for Failure to Stop Payment of Preauthorized Transfer:

If you order us to stop a preauthorized payment three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

FRAUDULENT OR CRIMINAL CARD ACCOUNT OR VIRTUAL ACCOUNT ACTIVITY

We reserve the right to block or cancel your Card Account or Virtual Account if, as a result of our policies and processes we detect what we reasonably believe to be fraudulent, suspicious or criminal activity or any activity that is inconsistent with this Agreement. We will incur no liability to you because of the unavailability of the funds that may be associated with your Card Account and/or Virtual Account.

RETURNS AND REFUNDS

If you are entitled to a refund for any reason for goods or services obtained with your Card or Virtual Account, you agree to accept credits to your Card Account for such refunds and agree to the refund policy of that Merchant. If you have a problem with a purchase that you made with your Card or Virtual Account, or if you have a dispute with the Merchant, you must attempt to handle it directly with the Merchant. There may be a delay of up to five (5) days or more from the date the refund transaction occurs until the date the refund amount is credited to your Card Account.

CARD REPLACEMENT

If you need to replace your Card for any reason, please contact us at 1-877-849-3249 to request a replacement Card. You will be required to provide personal information which may include your Card Number, full name, transaction history, and similar information to help us verify your identity. There is a fee for replacing your Card. For information about the fee, see the section labeled *"Fee Schedule."*

TRANSACTIONS MADE IN FOREIGN CURRENCIES AND/OR WITH MERCHANTS LOCATED IN FOREIGN COUNTRIES

- A. If you obtain funds or make a purchase in a currency other than the currency in which your Card Account was issued, the amount deducted from your funds will be converted by MasterCard International Incorporated ("**MasterCard**") into an amount in the currency of your Card Account. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by MasterCard from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate MasterCard itself receives or the government-mandated rate in effect for the applicable central processing date. This percentage amount is independent of any amount taken by the Issuer in accordance with this Agreement, and,
- B. If you obtain funds or make a purchase in a currency other than the currency in which your Card Account was issued, or conduct a transaction with a Merchant located outside the U.S., Puerto Rico, the U. S. Virgin Islands, Guam, or the Marianas Islands, the Issuer will deduct a 3.5% transaction fee ("**Foreign Transaction Fee**") based on the amount of the transaction, in the currency of your Card Account. The Issuer will retain this fee as compensation for its services.

RECEIPTS

You should get a receipt at the time you make a transaction using your Card or Virtual Account. You agree to retain, verify, and reconcile your transactions and receipts. You can get a receipt at the time you make any transfer from your Card Account using one of our ATM terminals.

CARD ACCOUNT BALANCE/PERIODIC STATEMENTS

You are responsible for keeping track of the available balance of your Card Account. Merchants generally will not be able to determine your available balance. It's important to know your available balance before making any transaction. You may determine your available balance by accessing your Card Account online at www.BrinksPrepaidMasterCard.com; by enrolling in the Anytime Alerts SMS service; or by calling 1-877-849-3249 (there will be a fee for this call, see below). A sixty (60) day history of account transactions is available free of charge at www.netspend.com.

Statements in electronic format will also be made available free of charge at www.netspend.com for each month in which a transaction occurs. You will not automatically receive paper statements. You have the right to obtain a sixty (60) day written history of account transactions by calling 1-877-849-3249, or by writing to us at Brink's Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136. **There is a fee for obtaining a written history.** For information about each of the fees described in this section, see the section labeled "*Fee Schedule.*"

CONFIDENTIALITY

We may disclose information to third parties about your Card Account or the transactions you make:

- (1) As provided in the privacy policy associated with the Brink's Prepaid MasterCard;
- (2) Where it is necessary for completing transactions;
- (3) In order to verify the existence and condition of your Card or Virtual Account for a third party, such as a Merchant;
- (4) In order to comply with government agency or court orders, or other legal reporting requirements;
- (5) If you give us your written permission; or
- (6) To our employees, auditors, affiliates, service providers, or attorneys, as needed.

OUR LIABILITY FOR FAILURE TO COMPLETE TRANSACTIONS

If we do not properly complete a transaction to or from your Card Account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (1) If through no fault of ours, you do not have enough funds available in your Card Account to complete the transaction;
- (2) If a Merchant refuses to accept your Card or Virtual Account;
- (3) If an ATM where you are making a cash withdrawal does not have enough cash;
- (4) If an electronic terminal where you are making a transaction does not operate properly, and you knew about the problem when you initiated the transaction;
- (5) If access to your Card Account has been blocked after you reported your Card, Virtual Account or PIN lost or stolen;
- (6) If there is a hold or your funds are subject to legal process or other encumbrance restricting their use;
- (7) If we have reason to believe the requested transaction is unauthorized;
- (8) If circumstances beyond our control (such as fire, flood, or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken; or
- (9) Any other exception stated in our Agreement with you.

INFORMATION ABOUT YOUR RIGHT TO DISPUTE ERRORS

In case of errors or questions about your Card Account, telephone us at 1-877-849-3249, write to us at Brink's Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136, or email us at Contact@BrinksMoney.com as soon as you can, if you think an error has occurred in your Card Account. We must allow you to report an error until sixty (60) days after the earlier of the date you electronically access your Card Account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at 1-877-849-3249 or writing to us at Brink's Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136.

You will need to tell us:

1. Your name and Card Number.
2. Why you believe there is an error, and the dollar amount involved.
3. Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your Card Account within ten (10) business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your Card Account.

For errors involving new Card Accounts, POS transactions, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new Card Accounts, we may take up to twenty (20) business days to credit your Card Account for the amount you think is in error.

We will tell you the results within three (3) business days after completing the investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation. If you need more information about our error-resolution procedures, call us at 1-877-849-3249 or visit www.BrinksPrepaidMasterCard.com.

LOST OR STOLEN CARDS/UNAUTHORIZED TRANSFERS

If you believe your Card, Virtual Account or PIN has been lost or stolen, call 1-877-849-3249 or write to: Brink's Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136. You should also call the number or write to the address shown here if you believe an electronic fund transfer has been made using the information from your Card, Virtual Account or PIN without your permission.

Your Liability for Unauthorized Transfers

Contact us AT ONCE if you believe your Card, Virtual Account or PIN has been lost or stolen, or if you believe that an electronic funds transfer has been made without your permission. Telephoning us at 1-877-849-3249 is the best way to minimize your possible losses. You could lose all the money in your Card Account.

Under MasterCard Rules, your liability for unauthorized MasterCard debit transactions on your Card Account is \$0.00 if you notify us within two (2) business days and you exercise reasonable care in safeguarding your Card from loss, theft, or unauthorized use. This reduced liability does not apply if a PIN is used as a method of verification for a disputed transaction or you have reported two (2) or more incidents of unauthorized use in the immediately preceding twelve (12) month period.

If you notify us within two (2) business days after you learn of the loss or theft of your Card, Virtual Account or PIN, you can lose no more than \$50.00 if someone used your Card, Virtual Account or PIN without your permission. If you do NOT notify us within two (2) business days after you learn of the loss or theft of your Card, Virtual Account or PIN and we can prove that we could have stopped someone from using your Card, Virtual Account or PIN without your permission if you had promptly notified us, you could lose as much as \$500.00. If your Card or PIN has been lost or stolen, we will deactivate your Card and issue you a new Card to keep losses down.

Also, if you become aware of and/or your electronic history shows transactions that you did not make, including those made by your Card or other means, notify us at once following the procedures stated in the section labeled "*Information About Your Right to Dispute Errors*" appearing above. If you do not tell us within 60 days of the earlier of the date you electronically access your account, if the unauthorized transaction could be viewed in your electronic history, or the date we sent the FIRST written history on which the unauthorized transfer appeared, you may not get back any money you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the money if you had notified us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods for a reasonable period.

MISCELLANEOUS

Your Card Account and your obligations under this Agreement may not be assigned. We may transfer our rights under this Agreement. Use of your Card or Virtual Account is subject to all applicable rules and customs of any clearinghouse or other network or association involved in transactions. We do not waive our rights by delaying or failing to exercise them at anytime. If any provision of this Agreement shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this Agreement shall not be affected. This Agreement will be governed by the laws of the State of California except to the extent governed by federal law.

AMENDMENT AND CANCELLATION

We may (a) amend or change the terms and conditions of this Agreement or (b) cancel or suspend your Card Account or this Agreement at any time without prior notice to you except as required by applicable law. You may cancel this Agreement by returning the Card (if applicable) to us. Your termination of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to termination.

In the event your Card Account is cancelled, closed, or terminated for any reason, so long as you used your Card Account in accordance with the terms of this Agreement, you may request the unused balance to be returned to you via a check to the mailing address we have in our records. Unless you are eligible for receipt of "Excess Funds," as described in the section labeled, "Activation/Registration," there is a fee for this service. For information about the fee, see the section labeled "*Fee Schedule*." **The Issuer reserves the right to refuse to return any unused balance amount less than \$1.00.**

We will comply with unclaimed property laws and appropriately engage in escheatment activities as required by state law.

DELIVERY OF ELECTRONIC COMMUNICATIONS

The following E-SIGN Disclosure and Consent ("**Disclosure**") applies to any and all communications or disclosures that we are legally required to provide to you in writing in connection with your Card Account and any related products and services ("**Communications**"), to the extent you have consented to receiving such Communications electronically. **If you have not consented and would like to receive Communications electronically from us, please visit us online at www.BrinksPrepaidMasterCard.com. IF YOU WISH TO PARTICIPATE IN THE OPTIONAL OVERDRAFT PROTECTION SERVICE YOU MUST CONSENT TO RECEIVE COMMUNICATIONS FROM US IN ELECTRONIC FORM THROUGHOUT THE ENTIRE DURATION OF YOUR PARTICIPATION IN THE OVERDRAFT PROTECTION SERVICE. IF**

YOU WITHDRAW YOUR CONSENT TO RECEIVE COMMUNICATIONS IN ELECTRONIC FORM, YOUR PARTICIPATION IN THE OVERDRAFT PROTECTION SERVICE WILL BE IMMEDIATELY DEACTIVATED.

1. Scope of Communications to Be Provided in Electronic Form. When you use a product or service to which this Disclosure applies, you agree that we may provide you with any Communications in electronic format, and that we may discontinue sending paper Communications to you, unless and until you withdraw your consent as described below. Your consent to receive electronic communications and transactions includes, but is not limited to:

- All legal and regulatory disclosures and communications associated with your Card Account and any related products or services
- Your Cardholder Agreement and any notices about a change in terms of your Cardholder Agreement
- Privacy policies and notices
- Error Resolution policies and notices
- Responses to claims filed in connection with your Card Account
- Notices regarding insufficient funds or negative balances

2. Method of Providing Communications to You in Electronic Form. All Communications that we provide to you in electronic form will be provided either (1) via email (if you have elected to receive email messages from us), (2) by access to a web site that we will designate in an email notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to the www.BrinksPrepaidMasterCard.com website.

3. How to Withdraw Consent. You may withdraw your consent to receive Communications in electronic form at any time by contacting us at 1-877-849-3249 or visiting the www.BrinksPrepaidMasterCard.com web site. If you do withdraw your consent, we will send subsequent Communications to you in writing to the most current mailing address we have for you in our records. We will not impose any fee to process the withdrawal of your consent to receive electronic Communications. Any withdrawal of your consent to receive electronic Communications will be effective only after we have a reasonable period of time to process your request for withdrawal. In the meantime, you will continue to receive Communications in electronic form. If you withdraw your consent, the legal validity and enforceability of prior Communications delivered in electronic form will not be affected.

4. How to Update Your Records. It is your responsibility to provide us with a true, accurate and complete email address (if you have elected to receive email messages from us), your contact information, and other information related to this Disclosure and your Card Account, and to maintain and update promptly any changes in this

information. You can update information (such as your email address) through www.BrinksPrepaidMasterCard.com or by contacting us at 1-877-849-3249.

5. Requesting Paper Copies. We will not send you a paper copy of any Communication, unless you request it or we otherwise deem it appropriate to do so. You can obtain a paper copy of an electronic Communication by printing it yourself or by requesting that we mail you a paper copy, provided that such request is made within a reasonable time after we first provided the electronic Communication to you. To request a paper copy, contact us by calling 1-877-849-3249 or writing to us at Brink's Prepaid MasterCard c/o NetSpend, P.O. Box 2136, Austin, TX 78768-2136. We may charge you a service charge for the delivery of paper copies of certain Communications provided to you electronically pursuant to this authorization. See the *Fee Schedule* for details about this service charge. We reserve the right, but assume no obligation, to provide a paper (instead of electronic) copy of any Communication that you have authorized us to provide electronically.

6. Termination/Changes. We reserve the right, in our sole discretion, to discontinue the provision of your electronic Communications, or to terminate or change the terms and conditions on which we provide electronic Communications. We will provide you with notice of any such termination or change as required by law.

CUSTOMER SERVICE

For customer service or additional information regarding your Card Account, please contact us at:

Brink's Prepaid MasterCard
c/o NetSpend
P.O. Box 2136
Austin, Texas 78768-2136
1-877-849-3249

Customer Service agents are available to answer your calls:
Monday through Friday, 8 a.m. to 10 p.m. CT
Saturday and Sunday, 8 a.m. to 8 p.m. CT, excluding holidays.

Card Account balance inquiries made by telephone are subject to a fee. For information about the fee, see the section labeled "*Fee Schedule*."

TELEPHONE MONITORING/RECORDING

From time to time we may monitor and/or record telephone calls between you and us to assure the quality of our customer service or as required by applicable law.

NO WARRANTY REGARDING GOODS AND SERVICES

We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase with your Card or Virtual Account.

ARBITRATION

Purpose: This Arbitration Provision sets forth the circumstances and procedures under which claims (as defined below) may be arbitrated instead of litigated in court.

Definitions: As used in this Arbitration Provision the term “Claim” means any claim, dispute or controversy between you and us arising from or relating to the Card Account or this Agreement as well as any related or prior agreement that you may have had with us or the relationships resulting from this Agreement, including the validity, enforceability or scope of this Arbitration Provision or the Agreements. “Claim” includes claims of every kind and nature, including but not limited to initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. The term “Claim” is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (i) your Card Account; (ii) the amount of available funds in your Card Account; (iii) advertisements, promotions or oral or written statements related to your Card Account, or goods or services purchased with your Card or Virtual Account; (iv) the benefits and services related to your Card Account; and (v) your enrollment for any Card or Virtual Account. We shall not elect to use arbitration under the Arbitration Provision for any Claim that you properly file and pursue in a small claims court of your state or municipality so long as the Claim is individual and pending only in the court.

As used in the Arbitration Provision, the terms “we” and “us” shall for all purposes mean the Issuer, wholly or majority owned subsidiaries, affiliates, licensees, predecessors, successors, and assigns; and all of their agents, employees, directors and representatives. In addition, “we” or “us” shall include any third party using or providing any product, service or benefit in connection with any Card Accounts (including, but not limited to merchants who accept the Card or Virtual Account, third parties who use or provide services, debt collectors and all of their agents, employees, directors and representatives) if, and only if, such third party is named as a co-party with us (or files a Claim with or against us) in connection with a Claim asserted by you. As solely used in this Arbitration Provision, the terms “you” or “yours” shall mean all persons or entities approved by us to have and/or use a Card, including but not limited to all persons or entities contractually obligated under any of the Agreements and all additional Cardholders.

Initiation of Arbitration Proceeding/Selection of Administrator: Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in effect at the time the Claim is filed. Claims shall be referred to either the Judicial Arbitration and Mediation Services (“**JAMS**”) or the American Arbitration Association (“**AAA**”), as selected by the party electing to use arbitration. If a selection by us of one of these organizations is unacceptable to you, you shall have the right within 30 days after you receive notice of our election to select the other organization listed to serve as arbitrator administrator. For a copy of the procedures, to file a Claim or for other information about these organizations, contact them as follows: (i) JAMS at 1920 Main Street, Suite 300, Los Angeles, CA 92614; website at www.jamsadr.com; or (ii) AAA at 335 Madison Avenue, New York, NY 10017; website at www.adr.org.

Significance of Arbitration: IF ARBITRATION IS CHOSEN BY ANY PARTY WITH RESPECT TO A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM, OR TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED FOR IN THE CODE OF PROCEDURES OF JAMS OR AAA, AS APPLICABLE (THE “CODE”). FURTHER, YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. EXCEPT AS SET FORTH BELOW, THE ARBITRATOR’S DECISION WILL BE FINAL AND BINDING. NOTE THAT OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

Restrictions on Arbitration: If either party elects to resolve a Claim by arbitration, that Claim shall be arbitrated on an individual basis. There shall be no right or authority for any Claims to be arbitrated on a class action basis or on bases involving Claims brought in a purported representative capacity on behalf of the general public, other Cardholders or other persons similarly situated. The arbitrator’s authority to resolve Claims is limited to Claims between you and us alone, and the arbitrator’s authority to make awards is limited to you and us alone. Furthermore, Claims brought by you against us or by us against you may not be joined or consolidated in arbitration with Claims brought by or against someone other than you, unless otherwise agreed to in writing by all parties.

Location of Arbitration/Payment of Fees: Any arbitration hearing that you attend shall take place in the federal judicial district of your residence. At your written request, we will consider in good faith making a temporary advance of all or part of the filing, administrative and/or hearing fees for any Claim you initiate as to which you or we seek arbitration. At the conclusion of the arbitration (or any appeal thereof), the arbitrator (or panel) will decide who will ultimately be responsible for paying the filing, administrative and/or hearing fees in connection with the arbitration (or appeal). If and to the extent you incur filing, administrative and/or hearing fees in arbitration, including

for any appeal, exceeding the amount they would have been if the Claim had been brought in the state or federal court which is closest to the mailing address we have in our records and would have had jurisdiction over the Claim, we will reimburse you to that extent unless the arbitrator (or panel) determines that the fees were incurred without any substantial justification.

Arbitration Procedures: This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended (the “FAA”). The arbitration shall be governed by the applicable Code, except that (to the extent enforceable under the FAA) this Arbitration Provision shall control if it is inconsistent with the applicable Code. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law and, at the timely request of either party, shall provide a brief written explanation of the basis for the decision. In conducting the arbitration proceeding, the arbitrator shall not apply the Federal or any state rules of civil procedure or rules of evidence. Either party may submit a request to the arbitrator to expand the scope of discovery allowable under the applicable Code. The party submitting such a request must provide a copy to the other party, who may submit objections to the arbitrator with a copy of the objections provided to the requesting party, within fifteen (15) days of receiving the requesting party’s notice. The granting or denial of such request will be in the sole discretion of the arbitrator who shall notify the parties of his/her decision within twenty (20) days of the objecting party’s submission. The arbitrator shall take reasonable steps to preserve the privacy of individuals, and of business matters. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator’s decision will be final and binding, except for any right of appeal provided by the FAA. However, any party can appeal that award to a three-arbitrator panel administered by the same arbitration organization, which shall consider anew any aspect of the initial award objected to by the appealing party. The appealing party shall have thirty (30) days from the date of entry of the written arbitration award to notify the arbitration organization that it is exercising the right of appeal. The appeal shall be filed with the arbitration organization in the form of a dated writing. The arbitration organization will then notify the other party that the award has been appealed. The arbitration organization will appoint a three-arbitrator panel which will conduct arbitration pursuant to its Code and issue its decision within one hundred twenty (120) days of the date of the appellant’s written notice. The decision of the panel shall be by majority vote and shall be final and binding.

Continuation: This Arbitration Provision shall survive termination of your Card Account as well as voluntary payment of any debt in full by you, any legal proceeding by us to collect a debt owed by you, and any bankruptcy by you or us. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any principle or provision of law or equity, consistent with the FAA, it shall not invalidate the remaining

portions of this Arbitration Provision, the Agreement or any prior agreements you may have had with us, each of which shall be enforceable regardless of such invalidity.

FEE SCHEDULE

All fees will be withdrawn from your Card Account and will be assessed as long as there is a remaining balance on your Card Account, except where prohibited by law. Any time your remaining Card Account balance is less than the fee amount being assessed, the balance of your Card Account will be applied to the fee amount.

Refund Policy: Please call Customer Service with questions about our refund policy.

Three Purchase Plan Options:	Pay-As-You-GoSM Plan*	Monthly Fee Plan	Preferred Fee Plan
Plan Fee	None	\$9.95 per month	\$5.00 per month
Signature Purchase Transaction Fee**	\$1.00 each	Included in Plan	Included in Plan
PIN Purchase Transaction Fee**	\$2.00 each	Included in Plan	Included in Plan
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction	3.5% of the U.S. Dollar amount of the purchase transaction

* This Purchase Plan is automatically effective on your Card Account when you first obtain the Card. If you wish to change to another Purchase Plan, just call 1-877-849-3249 or visit www.BrinksPrepaidMasterCard.com.

**During checkout, select "CREDIT" on the keypad to make a Signature Purchase, or select "DEBIT" and enter your PIN to make a PIN Purchase.

Withdraw Cash (See our tip on how to avoid ATM fees below)	
Over the Counter Cash Withdrawal Fee at a financial institution	\$2.50 per withdrawal, plus the Foreign Transaction Fee, if applicable.
Over the Counter Cash Withdrawal Fee at a NetSpend Reload Network location	Fee may be assessed by reload location and may vary from location to location. Service not available in all reload locations.
Domestic ATM Cash Withdrawal Fee	\$2.50 per withdrawal, plus ATM owner fees, if any.
International ATM Cash Withdrawal Fee	\$4.95 per withdrawal, plus the Foreign Transaction Fee, and ATM owner fees, if any.
Foreign Transaction Fee	3.5% of the U.S. Dollar amount of the cash withdrawal
ATM Transaction Decline Fee	\$1.00 each
Tip to avoid ATM fees: Select "DEBIT" and enter your PIN to get cash back when making purchases at many retailers, such as grocery stores.	

Add Money To Your Account:	
Direct Deposit Fee	No fee
Fee to add cash or check proceeds at a NetSpend Reload Network location	Fee may be assessed by reload location and may vary from location to location.

Bank Transfer Fee	Visit your online Account Center to learn how to transfer funds to your Card from another bank account using a bank debit card or account number. Fees are determined and may be charged to the transferor's bank account by the originating bank.
Account-to-Account Transfer Fee via website or text message	No fee; standard text message rates may apply.
Account-to-Account Transfer Fee via Customer Service agent	\$4.95 each

Manage Your Account:	
Balance Inquiry Fee	-No fee using online Account Center -No fee using Anytime Alerts text or email message; standard text message rates may apply -\$0.50 each via Toll-Free Number automated service -\$0.50 each via Toll Free Number Customer Service agent -\$0.50 each via ATM
Check Refund, Paper Communications or Statement Mailing Fee	\$5.95 each
Additional Card Fee	\$9.95 each
Lost, Stolen or Damaged Card Replacement Fee	\$9.95 each
Account Maintenance Fee (also referred to as the Account Inactivity Fee)	\$5.95 per month (Fee applies if Card Account has not had any activity, that is, no purchases; no cash withdrawals; no load transactions; or no Balance Inquiry Fee for 90 days.) If enrolled in the Monthly Fee Plan and your Card Account has had no activity as described above, this fee applies instead of the Monthly Fee.
Overdraft Protection Service Fee (This optional service has Cardholder activation and eligibility requirements.)	\$15.00 per Overdraft occurrence (maximum of 3 fees per calendar month).

Make Payments:	
Bill Payment Fee	In addition to the one or more no-cost bill payment methods made available through third-party service providers, you can see a full range of options, including ACH Debit/ Preauthorized Payment Transactions, and the applicable fees in your online Account Center. Fees are determined and assessed by third-party service providers.
ACH Debit/ Preauthorized Payment Transaction Decline Fee	\$1.00 for each such declined transaction.
Stop Payment Fee for ACH Debit/Preauthorized Payment Transactions	\$10.00 each

Optional Features:	
Custom Card Fee	\$4.95 per custom card, if available.

Refunds are at par. **This Cardholder Agreement is effective April 01, 2014**
This Card is issued by BofI Federal Bank pursuant to license from MasterCard International Incorporated.

Standard GPR MasterCard – BofI – Brinks – Eng – Feb 2014



Cardholder Agreement IMPORTANT – PLEASE READ CAREFULLY

Please read this Agreement carefully and keep it for future reference. This document constitutes the agreement (“Agreement”) outlining the terms and conditions under which the MetroPCS® Visa® Prepaid Card Card has been issued to you. By accepting and using the Card, you agree to be bound by the terms and conditions contained in this Agreement. “Card” means the MetroPCS® Visa® Prepaid Card Card issued to you by BankFirst, Sioux Falls, South Dakota. “Issuer” means BankFirst. BankFirst is an FDIC insured member institution. “Card Account” means the records we maintain to account for the value of claims associated with the Card. “You” and “your” mean the person or persons who have received the Card and are authorized to use the Card as provided for in this Agreement. “We,” “us,” and “our” mean BankFirst, our successors, affiliates or assignees. You acknowledge and agree that the value available in the Card Account is limited to the funds that you have loaded into the Card Account or have been loaded into the Card Account on your behalf. You agree to sign the back of the Card immediately upon receipt. The expiration date of the Card is identified on the front and back of your Card. The Card is a prepaid card. The Card is not connected in any way to any other account. The Card is not a credit card. This Card is not for resale. You will not receive any interest on your funds in the Card Account. The Card will remain the property of BankFirst and must be surrendered upon demand. The Card is nontransferable and it may be canceled, repossessed, or revoked at any time without prior notice subject to applicable law. Our business days are Monday through Friday, excluding holidays, even if we are open. Write down your Card number and the customer service phone number provided in this Agreement on a separate piece of paper in case your Card is lost, stolen, or destroyed.

*Obtaining Your Card:

The USA PATRIOT Act is a federal law that requires all financial institutions to obtain, verify, and record information that identifies each person who opens a Card Account. What this means for you: When you open a Card Account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver’s license or other identifying documents.

Authorized Users:

You are responsible for all authorized transactions initiated and fees incurred by use of your Card. If you permit another person to have access to your Card or Card number, we will treat this as if you have authorized such use and you will be liable for all transactions and fees incurred by those persons. You are wholly responsible for the use of each Card according to the terms and conditions of this Agreement.

Secondary Cardholder:

You may request an additional Card for another person. The maximum number of additional Cards permitted is one (1). You must notify us to revoke permission for any person you previously authorized to use the Card. If you notify us to revoke another person’s use of the Card, we may revoke your Card and issue a new Card with a different number. If you opt to load cash to your Card through the Western Union® load network, you will be prevented from adding a secondary Card to your Card Account.

Personal Identification Number:

You will receive a Personal Identification Number (“PIN”) after you have activated your Card through the Interactive Voice Recognition (“IVR”) system by calling the number on the back of your Card or by accessing your personal Card Account at the website address located on the back of your Card. You should not write or keep your PIN with your

Card. If you believe that anyone has gained unauthorized access to your PIN, you should advise us immediately following the procedures in the paragraph labeled "Your Liability for Unauthorized Transfers."

Cash Access:

With your PIN, you may use your Card to obtain cash from any Automated Teller Machine ("ATM") which bears the Visa® or STAR® brand. With your PIN, you may use your Card to obtain cash from any Point-of-Sale ("POS") device, as permissible by merchant, which bears the Visa®, Interlink®, or STAR® brand. All ATM transactions are treated as cash withdrawal transactions. You may use your Card at an ATM. The maximum cumulative amount that may be withdrawn from an ATM per day is \$500. The maximum cumulative amount that may be withdrawn from a participating bank (over the counter withdrawal) per day is the available balance of your Card. Any funds withdrawn from a POS device will be subject to the maximum amount that can be spent on your Card per day.

Loading Your Card:

You may add funds to your Card, called "value loading", at any time. The minimum amount of each initial value load is \$20. The minimum amount of each value reload is \$20. The maximum amount of each initial value load is \$2,500. The maximum amount of each value reload is \$2,500. The maximum number of times you may load your Card per day is two (2). You may add value or load your Card with cash, credit card or debit card via the PreCash® load network, the Western Union load network, the Visa ReadyLink load network and the PayXone™ load network. You may also load your Card via PayPal®, direct deposit, bank wire transfer, or ACH from a checking or savings account. You may find load network locations and loading instructions by visiting www.direct-general.com or by calling 1-866-630-2503.

- a) If you use the PreCash, Visa ReadyLink or PayXone load networks, the maximum amount of each initial value load is \$999. The maximum amount of each value reload is \$999.
- b) If you use the Western Union load network, some of your Card features are not available to you.
 - 1. The maximum amount of each initial value load is \$950.
 - 2. The maximum amount of each value reload is \$950.
 - 3. You will not be able to have a secondary Card.
 - 4. You are limited to ten (10) loads per calendar month (not including direct deposit).

Direct Deposit Account

Your prepaid Card Account and associated direct deposit account number cannot be used for preauthorized direct debits from merchants or from utility or Internet service providers. If presented for payment, these preauthorized direct debits will be declined and your payment to the merchant or provider will not be processed. The bank routing number and direct deposit account number are for the purpose of initiating direct deposits to your prepaid Card Account only. You are not authorized to provide this bank routing number and direct deposit account number to anyone other than your employer or payer.

Using Your Card/Features

The maximum amount that can be spent on your Card per day is \$2,500. The maximum value of your Card is restricted to \$2,500.

You may use your Card to purchase or lease goods or services wherever Visa debit cards, Interlink cards, or STAR cards are accepted as long as you do not exceed the value available on your Card Account. Some merchants do not allow cardholders to conduct split transactions where you would use the Card as partial payment for goods and services and paying the remainder of the balance with another form of legal tender.

If you use your Card at an automated fuel dispenser ("pay at the pump"), the merchant may preauthorize the transaction amount up to \$75 or more. If your Card is declined, even though you have sufficient funds available, pay for your purchase inside with the cashier. If you use your Card at a restaurant, a hotel, for a car rental purchase, or for similar purchases, the merchant may preauthorize the transaction amount for the purchase amount plus up to 20% or more to ensure there are sufficient funds available to cover tips or incidental expenses incurred. Any preauthorization amount will place a "hold" on your available funds until the merchant sends us the final payment amount of your purchase. Once the final payment amount is received, the preauthorization amount on hold will be removed. It may take up to seven (7) days for the hold to be removed. During the hold period,

you will not have access to the preauthorized amount. If you use your Card number without presenting your Card (such as for a mail order, telephone, or Internet purchase), the legal effect will be the same as if you used the Card itself. For security reasons, we may limit the amount or number of transactions you can make on your Card. Your Card cannot be redeemed for cash. You may not use your Card for online gambling or any illegal transaction. Each time you use your Card, you authorize us to reduce the value available in your Card Account by the amount of the transaction and any applicable fees. You are not allowed to exceed the available amount on your Card Account through an individual transaction or a series of transactions. Nevertheless, if a transaction exceeds the balance of the funds available on your Card, you shall remain fully liable to us for the amount of the transaction and any applicable fees. You do not have the right to stop payment on any purchase or payment transaction originated by use of your Card. You may not make preauthorized regular payments from your Card Account. If you authorize a transaction and then fail to make a purchase of that item as planned, the approval may result in a hold for that amount of funds for up to thirty (30) days. All transactions relating to car rentals may result in a hold for that amount of funds for up to sixty (60) days.

Overdraft Feature:

If you attempt to use your Card for more than the current available balance in your Card Account, we may refuse to authorize the transaction. However, you may qualify for an overdraft feature. You must opt-in to this overdraft feature and it is subject to our approval. Upon qualification, your Card Account will be charged a one-time \$5.95 Participation Fee. When you overdraft your Card Account, you will receive one (1) overdraft advance of \$50 with a \$15 Overdraft Fee applied. You must pay the total overdraft amount, including fees, within twenty (20) days from the date of your overdraft or you will be assessed a Late Charge of \$3 per day commencing on the first day that you are late. You are allowed one (1) overdraft at a time, which must be repaid before any additional overdraft is allowed. Your Card Account may be suspended or canceled at any time if you do not repay the overdraft amount in a timely fashion. We reserve the right to decline any overdraft transaction. We reserve the right to cancel the overdraft feature at any time. We encourage you to make careful records and practice good Card Account management.

Returns and Refunds

If you are entitled to a refund for any reason for goods or services obtained with your Card, you agree to accept credits to your Card for such refunds and agree to the refund policy of that merchant. If you have a problem with a purchase that you made with your Card, or if you have a dispute with the merchant, you must handle it directly with the merchant.

Charges Made In Foreign Currencies

If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the amount deducted from your funds will be converted by Visa U.S.A. Inc. into an amount in the currency of your Card. The exchange rate between the transaction currency and the billing currency used for processing international transactions is a rate selected by Visa U.S.A. Inc. from the range of rates available in wholesale currency markets for the applicable central processing date, which may vary from the rate Visa U.S.A. Inc. itself receives, or the government-mandated rate in effect for the applicable central processing date. If you obtain your funds or make a purchase in a currency other than the currency in which your Card was issued, the Issuer may assess a foreign currency conversion fee of 3% of the transaction amount and will retain this amount as compensation for its services.

Receipts

You should get a receipt at the time you make a transaction using your Card. You agree to retain your receipts to verify your transactions. Card Account Balance/Periodic Statements You are responsible for keeping track of your Card Account available balance. Merchants generally will not be able to determine your available balance. It's important to know your available balance before making any transaction. You may access your available balance by accessing your Card Account online or by calling 1-866-630-2503. Statements in electronic format will be made available free of charge at www.metropcs.com/visa during each month in which a transaction occurs. You may access this electronic statement at any time. You will not automatically receive paper statements. You may choose to have a paper statement mailed to you by contacting us each time at 1-866-630-2503. However, there is a fee for this service.

Fee Schedule

All fee amounts may be withdrawn from your Card Account and will be assessed as long as there is a remaining balance on your Card Account, except where prohibited by law. Anytime your remaining Card Account balance is less than the fee amount being assessed, the balance of your Card Account will be applied to the fee amount. The Fee Schedule can be found in a separate insert that was mailed with your Card.

Confidentiality

We may disclose information to third parties about your Card or the transactions you make:

- 1) Where it is necessary for completing transactions;
- 2) In order to verify the existence and condition of your Card for a third party, such as merchant;
- 3) In order to comply with government agency, court order, or other legal reporting requirements;
- 4) If you give us your written permission; or
- 5) To our employees, auditors, affiliates, service providers, or attorneys as needed.

Our Liability for Failure to Complete Transactions

If we do not properly complete a transaction from your Card on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- 1) If through no fault of ours, you do not have enough funds available on your Card to complete the transaction;
- 2) If a merchant refuses to accept your Card;
- 3) If an ATM where you are making a cash withdrawal does not have enough cash;
- 4) If an electronic terminal where you are making a transaction does not operate properly, and you knew about the problem when you initiated the transaction;
- 5) If access to your Card has been blocked after you reported your Card lost or stolen;
- 6) If there is a hold or your funds are subject to legal process or other encumbrance restricting their use;
- 7) If we have reason to believe the requested transaction is unauthorized;
- 8) If circumstances beyond our control (such as fire, flood, or computer or communication failure) prevent the completion of the transaction, despite reasonable precautions that we have taken; or
- 9) Any other exception stated in our Agreement with you.

Your Liability for Unauthorized Transfers

Contact us at once if you believe your Card has been lost or stolen. Telephoning is the best way to minimize your possible losses. If you believe your Card has been lost or stolen, or that someone has transferred or may transfer money from your Card Account without your permission, call us at 1-866-630-2503. Under Visa U.S.A. Operating Regulations, your liability for unauthorized Visa transactions on your Card Account is \$0 if you notify us promptly and you are not grossly negligent or fraudulent in the handling of your Card. If you notify us within two (2) business days, you can lose no more than \$50 if someone used your Card without your permission. If you do not notify us within two (2) business days after you learn of the loss or theft of your Card and we can prove that we could have stopped someone from using your Card without your permission if you had promptly notified us, you could lose as much as \$500. Also, if you become aware of and/or your statement shows transactions that you did not make, notify us at once. If you do not notify us within sixty (60) days after you become aware of the transaction and/or after the statement was made available to you, you may not get back any value you lost after the sixty (60) days if we can prove that we could have stopped someone from taking the value if you had notified us in time and you are grossly negligent or fraudulent in the handling of your Card. If your Card has been lost or stolen, we will close your Card Account to keep losses down.

Other Terms

Your Card and your obligations under this Agreement may not be assigned. We may transfer our rights under this Agreement. Use of your Card is subject to all applicable rules and customs of any clearinghouse or other association involved in transactions. We do not waive our rights by delaying or failing to exercise them at anytime. If any provision of this Agreement shall be determined to be invalid or unenforceable under any

rule, law, or regulation of any governmental agency, local, state, or federal, the validity or enforceability of any other provision of this Agreement shall not be affected. This Agreement will be governed by the law of the State of South Dakota except to the extent governed by federal law.

Amendment and Cancellation

We may amend or change the terms and conditions of this Agreement at any time. You will be notified of any change in the manner provided by applicable law prior to the effective date of the change. However, if the change is made for security purposes, we can implement such change without prior notice. We may cancel or suspend your Card or this Agreement at any time. We reserve the right to cancel your Card without notice, if there is no activity within sixty (60) days. If your Card is canceled due to inactivity, you may call the number on the back of your Card to reactivate. Inactivity is defined as a zero or negative Card Account balance and no value loads, no purchase activity or cash withdrawals performed for sixty (60) consecutive days. This does not include fee charges. Your Card will be charged a monthly Inactivity Fee after this period of inactivity. You may cancel this Agreement by returning the Card to us. Your termination of this Agreement will not affect any of our rights or your obligations arising under this Agreement prior to termination.

Information About Your Right to Dispute Errors

In case of errors or questions about your electronic transactions, call 1-866-630-2503 or write to Cardholder Services, PO Box 71402, Salt Lake City, UT 84171 if you think your statement or receipt is wrong or if you need more information about a transaction listed on the statement or receipt. You must contact us no later than sixty (60) days after the FIRST statement was made available to you on which the problem or error appeared.

- 1) Provide your name and Card number (if any).
- 2) Describe the error or the transaction you are unsure about, and explain why you believe it is an error or why you need more information.
- 3) Provide the dollar amount of the suspected error.

If you provide this information orally, we may require that you send your complaint or question in writing within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days to investigate your complaint or question. If we decide to do this, we will credit your Card within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes to complete the investigation. If we ask you to put your complaint or question in writing and you do not provide it within ten (10) business days, we may not credit your Card. For errors involving new Cards, POS transactions, or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. We will tell you the results within three (3) business days after completing the investigation. If we decide that there was no error, we will send you a written explanation. Copies of the documents used in the investigation may be obtained by contacting us at the phone number or address listed at the beginning of this section.

English Language Controls

Any translation of this Agreement is provided for your convenience. The meanings of terms, conditions and representations herein are subject to definitions and interpretations in the English language. Any translation provided may not accurately represent the information in the original English.

Customer Service

For customer service or additional information regarding your Card, please contact us at:

Direct Vision Visa Card
PO Box 71402
Salt Lake City, UT 84171
1-866-630-2503

Revision Date (08/2007)

BankFirst PRIVACY NOTICE

We are committed to providing you quality products and services while protecting your privacy and security. This Privacy Notice explains what information we collect about you, with whom we share it, and when you can direct us not to share certain information with certain parties.

Privacy Practices of Third Parties

We are not responsible for the privacy policies or practices of any non-affiliated third party. We encourage you to review their privacy policy before providing them with any personally identifiable information. Third parties may collect and use information about you in a way that is different from this Notice.

Who “We” Are

In this Privacy Notice, we, us or our mean:

Marshall BankFirst Corp. - a bank holding company and the following wholly owned subsidiaries:
Marshall Bank, N.A.—a nationally chartered bank
Marshall Business Credit, LLC – a subsidiary of Marshall Bank, N.A.
BankFirst—a South Dakota state chartered bank

We have affiliated companies, under common ownership. The following companies are our affiliates:

The Marshall Group, Inc. Marshall Investments Corporation
Marshall Real Estate Corporation Marshall Capital Corporation
Marshall Financial, Inc. PMC Investments, LLC
Marshall Financial Holdings, LLC Marshall Financial Group, LLC
Marshall Funding, LLC Marshall Capital Partners, LLC

We have combined our Privacy Notice because you may be a customer of more than one entity.

Who “You” Are

This Privacy Notice will apply to you if you are a consumer who has a continuing relationship with one or more of us. A consumer is a natural person (not a corporation or other legal entity) whose account covered by this Notice is established for personal, family or household purposes (as opposed to a business purpose). If you have a joint account with us, you should share this Notice with the persons who share your account. They may not receive a separate Notice. If you have more than one account with us, you may only receive one copy of this Notice. The practices described in this Notice also apply to our former customers.

What “Information” Is

The term information as used in this Privacy Notice means non-public personal information. This is a legal term which generally means:

- 1) Information that can identify you such as your name, address or social security number,
- 2) that is not publicly available, and
- 3) that we collect in connection with providing a financial product or service to you.

Our Information Collection Practices

In order to provide you with quality products or services, we collect and maintain information about you. This includes personal and financial information which is generally not available to the public. We get this type of information from various sources, including:

- Information you provide to us on applications or other forms, whether in person, by mail, over the telephone or via the Internet. This information may include, for example, your name, address, social security number, and date of birth.

- Information we learn through your financial transactions with us. This may include information on your account balance, transaction history, and account usage.
- Information we receive from a credit reporting agency (credit bureau), if applicable. This may include your credit score and credit history.
- Information we receive from our affiliates and from non-affiliated third parties, relating to their transaction experience with you.

Information We Share with Affiliates

We may share information derived from transactions we conduct on your behalf with affiliates. Under Federal law, you may not opt-out of disclosure of this information . We may also share information you provide directly to us on applications or forms, or information we receive from credit reporting agencies or other companies, related to your credit worthiness or payment history. You may opt-out of the disclosure of this information as described below.

Information We Share with Service Providers and Joint Marketers

We may disclose information we collect from you to companies and affiliates that perform services on our behalf such as preparing and mailing monthly statements or responding to customer inquiries. We may also provide other information obtained from you , except for information from consumer reporting agencies, to companies and affiliates who perform marketing services for us or to other financial institutions with which we have joint marketing agreements. You may not opt-out of the disclosure of this information.

Information We Share with Non-Affiliated Third Parties

We do not disclose any information about you to non-affiliated third parties, except as permitted by law.

Our Data Security Procedures

We restrict access to non-public personal information about you to those persons who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards to guard your non-public personal information.

Changes to this Notice

We may make changes to this Privacy Notice at any time. If we do, we will provide you with a notice of such changes as required by law. This Notice replaces any other previous Privacy Notice about our customer information sharing practices.

Compliance with State Law

We will comply with more restrictive state laws to the extent that they apply to us.

Opt-Out Procedures

If you prefer that we not disclose non-public personal information about you with affiliates , you may opt-out of those disclosures (other than disclosures permitted by law) by calling us at 1-877-554-2339. Please allow several weeks for your opt-out request to take effect. Your election to opt-out will remain in effect until revoked by you in writing. Please understand that even if you choose to opt-out, we may continue to share your non-public personal information with affiliates and certain non-affiliated third parties as permitted by applicable law.

For More Information

If you have questions regarding the information contained in this Notice, please contact us at: 1-877-554-2339

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PRECASH, INC. PRIVACY POLICY

At PreCash, Inc. we value your trust and respect your privacy. This Notice applies to our existing and former customers, meaning individuals who obtain a financial product or service from us primarily for consumer (personal, family or household) purposes. " Personal information" refers to most nonpublic personally identifiable financial information about you, but does not include information that is available from public sources, such as telephone directories or government records.

Collection, Use and Retention of Information About You

We collect personal information about you from the following sources:

- Information we receive from you on applications and other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from consumer reporting agencies and other lawful sources.

Disclosure of Information

We disclose personal information about you or our former customers as permitted by law. Examples of what is permitted by law include: disclosing personal information to affiliated or nonaffiliated companies if it is necessary or helpful in completing a transaction; to report to consumer reporting agencies; to comply with government or court orders; to report an apparent crime; or if you give us your consent.

Marketing Disclosures

We also may disclose all of the information we collect, as described above, to companies that perform marketing services on our behalf. The third parties sign agreements with us that contain confidentiality provisions.

The Security of Account Information

We restrict access to personal information about you to our employees and agents who have a need to know such information. We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your personal information.

Changes to this Notice

We may amend this Notice from time to time and will notify you of any amendments if required by applicable law.

Questions

If you have any questions regarding this Notice, you can contact us at:

PreCash, Inc.
Attn: Customer Service – Privacy Policy
1800 West Loop South, Suite 1400
Houston, Texas 77027
Telephone: 1-801-924-1755 (toll free)
Website: www.precash.com

State - Specific Requirements

Texas

After first contacting PreCash, Inc., if you still have an unresolved complaint regarding our money transmission activities, please direct your complaint to:

Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705
Telephone: 1-877-276-5554 (toll free)
Website: www.banking.state.tx.us

29%

of prepaid cardholders say they would like to “Have a purchase go through for an overdraft or declined item fee of \$15 or so”³

92% of NetSpend customers would recommend Optional Overdraft Protection to a friend or family member.

Many NetSpend customers receive fee free overdrafts.

- 55% of overdraft transactions are fee free.
- 41% of overdraft users get at least one free overdraft a month.
- 12% of monthly overdraft users pay no fees.

Our transaction analysis and focus group results show customers primarily use our overdraft program to buy groceries and to take out cash for rent and other essential bill payments.

A couple of years ago, my card was compromised and Netspend caught it IMMEDIATELY. They take security of my account very seriously and because of that, I did not have to go through the hassle of disputing fraudulent charges. There was another time when my wife was far from home and running low on gas and because of the overdraft feature she was able to refuel and make it home safely. So of all the prepaid debit cards out there, the ONLY one I would recommend is Netspend. I also like the fact that I receive my gov. benefits up to 4 days early.

Rodney of Enola, PA, January 25, 2014

I'm 61 years old and if it had not been for Netspend, I would not be able to even eat some days even though that creates an overdraft still that overdraft becomes a blessing when you are sitting at home trying to figure out should you eat breakfast and not dinner or have coffee for breakfast and make that your morning & afternoon meal and have something small that evening. I praise Netspend for being there for me, I thank God for them everyday and I recommend them to anyone who has SSI or Soc Sec that needs direct deposit. I am an Associate Minister at a very large Church, one of the most High Profile Churches in the United States and I tell my Congregants "Use Netspend."

Rev Mark of Los Angeles, CA, January 25, 2014

3. Pew Charitable Trust, Why Americans Use Prepaid Cards(2013), http://www.pewstates.org/uploadedFiles/PCS_Assets/2014/Prepaid-Cards-Survey-Report.pdf

42%

of prepaid cardholders have no emergency savings.²

NetSpend's Optional Overdraft Protection Program helps cardholders cover emergencies

With the most customer friendly pricing and practices

Principles	NetSpend Prepaid	NetSpend Paycard
Customer choice and awareness	Customers must opt-in, enroll in e-sign, provide an e-mail address.	Customers must opt-in, NetSpend sends paper notices for Overdraft opt in and out.
Encourage customer success	There is no fee if the customer repays the overdrawn amount within 24 hours from the time the transaction settles.	There is no fee if the customer repays the overdrawn amount by the time the transaction settles.
Discourage excessive use	<ul style="list-style-type: none"> • Customers can incur no more than 3 fees per month. • Customers are cooled off after 12 fees in 12 months. • \$100 maximum negative balance inclusive of fees. 	<ul style="list-style-type: none"> • Customers can incur no more than 5 fees per month . • Customers are cooled off after 18 fees in 12 months. • \$125 maximum negative balance inclusive of fees.
Overdraft fees should be reasonable and proportional	<ul style="list-style-type: none"> • Overdrafts up to \$10 incur no fee. • \$15.00 fee per transaction if exceeds Free Buffer (\$10.01+) or account is not reloaded within 24 hour grace period. 	<ul style="list-style-type: none"> • Overdrafts up to \$ 5 incur no fee. • \$ 25.00 fee per transaction if exceeds Free Buffer (\$5.01+).
No re-ordering of debits to maximize the number of overdraft fees	<ul style="list-style-type: none"> • All fees are pended at the time the transaction is authorized. • Transactions are never re-ordered. 	
Overdraft should not be marketed as a source of credit	All overdraft communications include a reminder that it is an expensive service that should not be overused.	

2. Pew Charitable Trust, Why Americans Use Prepaid Cards(2013), http://www.pewstates.org/uploadedFiles/PCS_Assets/2014/Prepaid-Cards-Survey-Report.pdf

Skylight Program Partners

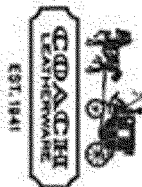
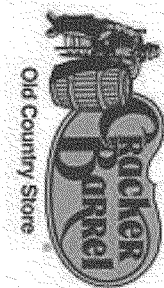
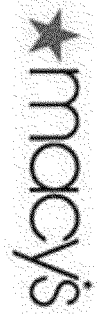
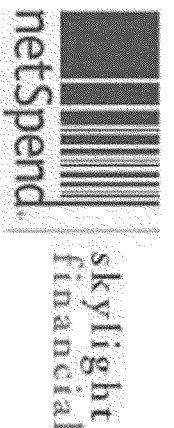


Exhibit 15: Denver Public Schools

(<http://departmentforms.dpsk12.org/payroll/paycardsfaq.pdf>)

PAY CARDS – FREQUENTLY ASKED QUESTIONS

- What is the Skylight One Card?
 - The Skylight One Card is a **Visa debit card** that replaces your pay check and is funded by direct deposit.
- Is the Skylight card a credit card?
 - No. Pay owed to you is direct deposited into you Skylight debit card and can be used at millions of locations that accept Visa debit cards, and at most ATMs worldwide.
- Why are you eliminating payroll checks?
 - To comply with the DPS policy that requires direct deposit of your pay as a condition of your employment.
 - Savings – no more non-compliance fees and check cashing fees.
 - Convenience – immediate access to your funds by 7am MT each payday. No more waiting for your check.
 - Safety – no need to carry around large sums of cash.
 - Other – use your card to shop and pay bills.
- Where and how can I use my Skylight card?
 - Make purchases – Use it at millions of merchants worldwide that accept Visa debit cards, including online or over the phone. There is no fee when you choose to sign for your transactions.
 - Withdraw funds from an ATM – your card is accepted at nearly any ATM. There are many locations such as Safeway, King Soopers, Walgreens, 7-11, & Target that are surcharge free.
 - Pay bills – using your card routing & account number, set up one-time or recurring payments online or by phone.
 - Free over-the-counter cash withdrawals at any Visa Member Bank = 95,033 locations.
- How do I activate a new card?
 - Call the phone number on the card's sticker. You will be asked to choose a Personal Identification Number (PIN), which you should memorize. Sign your card and report any lost or stolen card immediately.
- How do I check my balance and transaction history?
 - Online: Access your account online anytime to see deposits, withdrawals, and purchases.
 - Telephone: call the number on the back of your card for toll-free automated phone service 24/7.
 - Call Skylight Customer Care between 5am – 9:30pm seven days a week.
- Can I use my card to make a purchase that is larger than my available balance?
 - Skylight will not authorize or pay transaction that will cause you to exceed your available balance unless you ask us in advance by signing up for Optional Balance Protection.

- PLEASE DON'T OPT INTO THE OPTIONAL BALANCE PROTECTION PROGRAM, WHICH WILL INCURE A \$25 CHARGE FOR EACH TRANSACTION THAT PAYS INTO OVERDRAFT.
- Can I get additional cards?
 - It is easy to get a second card for your account. Simply contact Skylight Customer Care at the number on the back of your card and request the addition of a joint owner or a sub-account:
 - ❖ Joint Owner – Adding a joint owner gives a person you trust access to all of the funds in your primary account.
 - ❖ Sub-account – This is linked to your primary account and allows you to transfer funds to a secondary cardholder no matter where they are. The secondary cardholder will not have access to any of the funds in the primary account. There is a \$3 monthly fee for a sub-account.
- What should I do if there are transactions I don't recognize?
 - Always compare the receipts you receive after each transaction you make to the items pending or posted to your account. If you need more information about a transaction, you should contact Skylight Customer Care using the number on the back of your card.
- What do I do if my card is lost or stolen?
 - Your Visa debit card is backed by the Visa Zero Liability Policy, which means that you will not be held responsible for any unauthorized signature-based purchases made with your card. Immediately report a lost or stolen card by contacting Skylight Customer Care at 1-800-686-3363. You'll be issued a replacement card and can choose how fast your new card will be delivered. Each year, your first replacement card can be delivered by regular mail at no additional charge to you.
- How can I contact Skylight?
 - Call Skylight Customer Care at 1-800-686-3363, or write to us at Skylight Financial, Inc., PO Box 467428, Atlanta, GA 31146.

Cardholder Fees

Most employee cardholder paycard transactions are free of charge, however certain fees will apply for some transactions.

Transaction Description	Fee	Comments
Signature Based Visa Purchases	FREE	Purchases that requires a signature.
Domestic POS – PIN Purchases	FREE	Purchases outside the Continental US are not allowed.
Purchase With Cash Back	FREE	Select "Yes" for cash back and select amount.
1 st ATM Withdrawal per Pay Period	FREE	Within Skylight Sponsored Networks (US Bank and Allpoint Network ATMs).
ATM Withdrawal after 1 st free	\$1.50	Always Surcharge-free within Skylight Sponsored ATM Networks (US Bank and Allpoint Network ATMs). Cardholders can withdraw up to \$1,000 each calendar day.
International ATM Withdrawal	\$1.50	ATM Owner surcharge may apply.
Visa Over-the-Counter Cash Withdrawal	FREE	A Visa Member Bank inside teller transaction.
Skylight Checks	FREE	Cash Skylight Checks for free at US Banks and participating ACE Cash Express locations. The employee can request that a Skylight Check be cancelled/voided free of charge by calling Customer Care. Funds will be reissued to the cardholder account within 2-3 days business days.
Balance Inquiry via IVR	FREE	The cardholder can get an updated balance by calling the toll-free number on the back of the card. They will be required to enter the card number and their PIN.
Transaction Inquiries & Denials	\$1.00	Balance Inquiries at an ATM and transaction declines are assessed this fee.
Monthly Fee – Primary Account	FREE	There is no monthly charge to the employee (primary cardholder).
Monthly Fee – Sub Account & Additional Accounts	FREE	Additional accounts have the same access to the funds in the primary account as the employee. Sub Account holders do not have access to the primary account funds and can only be funded by a sub account transfer.
Account-to-Account Transfers	FREE	Sub Account Transfers occur between the primary cardholder and any Sub Accounts that they have set up. The primary accountholder can transfer funds by calling Customer Care or directly via Online banking. Account-to-Account transfers occur when the primary cardholder is the owner of two accounts at Skylight. This may happen if they have an existing account from another employer and they wish to keep that other account separate from their State of Kansas account. The primary accountholder can accomplish this transfer by calling Customer Care or directly or via Online Banking.

Cardholder fees, cont.

Transaction Description	Fee	Comments
Wire/MoneyGram® – Outgoing (Domestic & International)	\$25.00	Outgoing MoneyGram® funds transfer is only used to wire funds directly to the cardholder when the cardholder does not have an active card. The limit is (1) transaction per day with a maximum of \$1,000. If the cardholder has an active card, they are encouraged to cash a Skylight Check or perform a Visa cash withdrawal to access their funds.
Stop Payment	\$25.00	If the cardholder sets up recurring payments on their paycard, they can submit a request to stop the payment. The precise date and amount of the recurring payment must be included in the request.
Statements via Web	FREE	Cardholder can access their statement history at any time via Online Banking by visiting www.skylightonecard.com . They must be a registered Online Banking user.
Statement Reprints	\$5.00	Cardholders can request a statement reprint by calling Customer Care.
Standard Card Replacement	\$7.00	The cardholder is allowed (1) free replacement paycard every 12 months, delivered regular mail. Overnight delivery charges will apply if the cardholder requests next day delivery. Additional paycard replacement requests will be charged the fee.
Insufficient Funds (NSF)	\$25.00	During the 35 days following the initial direct deposit to the account, the cardholder is allowed to overdraw the account by \$4.99 without incurring a fee. If they attempt a transaction that would overdraw the account by more than \$4.99, the transaction will be denied and the cardholder will be charged a \$1.00 denial fee. After day 36, the threshold is raised to \$25.00. The cardholder is allowed to overdraw their account by \$25, but they will be charged a \$25.00 NSF fee. The cardholder is still allowed to overdraw up to \$4.99 at no charge, but any charge overdrawn between \$5.00 to \$25.00 will incur a NSF fee.
Inactivity Fee	\$5.00	Assessed after 120 days if there are no direct deposits or transactions. The fee is charged only if the account has a balance.
Account Closing (Check Issuance)	\$10.00	If the cardholder requests to close the account and there is an account balance, a check is mailed to the cardholder for the amount of the account balance. The check will be mailed to the cardholder address on file within 5-7 business days.



READY FUNDS®

EZACCESS® OVERDRAFT PRIVILEGE

eZaccess Overdraft Privilege - a secure, smart solution

It covers transactions that exceed the balance in your account, eliminating the inconvenience of rejected debit card or ATM transactions.

Enrollment is easy!

- ▶ Visit www.readyfunds.net/cardholderservices and select the eZaccess Overdraft Privilege link to learn more and enroll in this new feature.
- ▶ Read "What You Need to Know About Overdrafts and Overdraft Fees" and click "I Agree" to consent to our standard overdraft practices and authorize us to pay overdrafts on your prepaid debit card from ATM and everyday prepaid debit card transactions.
- ▶ Enroll into the eZaccess Overdraft Privilege program. After you enroll, it may take up to one business day before you can use the feature.
- ▶ We will verify your eligibility and send you an email confirmation.

How Do I Use Overdraft Privilege?

- ▶ When you are ready to use the Overdraft Privilege feature, you may activate an eZaccess Overdraft Privilege request up to your approved amount. Go to www.readyfunds.net/cardholderservices
- ▶ We are not required to approve any request to access Overdraft Privilege, but if we do approve your request we will load funds to your prepaid card in the amount of your request. You may then use your card for transactions up to the amount that we loaded. You may use your card for:
 - ▶ ATM Transactions
 - ▶ Point-of-Sale Purchases (every day prepaid debit card transactions)
 - ▶ Automatic Bill Payments
- ▶ Once you have made one Overdraft Privilege request, you may not make another request until you have deposited funds to your card to fully repay the amount we loaded to your card.
- ▶ While we are not required to approve any request for Overdraft Privilege, we will not approve more than 2 per month or 12 per year.

What fees will I be charged to use this feature?

- ▶ Each time you request and we approve an Overdraft Privilege, we will charge you a one-time Overdraft Privilege fee of \$35 to load the funds to your card. We do not charge additional fees when you use your card to access those funds, but our standard Bill Payment, ATM and bank teller withdrawal fees may apply (ATM operators might also charge fees).
- ▶ If you repay the full amount of your Overdraft Privilege request (the amount we loaded to your card) within 24 hours, we will waive the \$35 Overdraft Privilege fee.

For more information, contact us today: Toll Free: 1.877.323.9363 • Web: readyfunds.net

The ReadyFUNDS Premier Access MasterCard Payroll card is issued by First Covenant Bank pursuant to license from MasterCard International Incorporated. MasterCard and the MasterCard Brand Mark are registered trademarks of MasterCard International Incorporated. First Covenant Bank, Member FDIC. For a complete list of ReadyFUNDS terms, conditions, fees and eligibility requirements, see the ReadyFUNDS Cardholder Agreement. ReadyFUNDS Premier Access Card program and eZsuite is licensed through Performance Benefits, Inc. and its affiliates and service providers are responsible for the operation and administration of all other products and services offered in the eZsuite of financial services. Fees and eligibility requirements apply. *ATM owners and operators may impose fees and transaction limits, and store POS cash back limits and fees may apply. *Contact your cell phone provider for details on your plan's text messaging rates that could apply when using your cell phone to access or use ReadyFUNDS.

ADMINRECORD-V2-00007806

EXHIBIT 18: ALABAMA

Prepaid Card Solutions PayCard (Reloadable)

Frequently asked questions

Why spend your time standing in line to cash a check? With the Prepaid Card Solutions PayCard, you can access your pay at more than 426,000 automated teller machines (ATM) in the United States. You can also buy groceries, gas, or services from more than 30 million merchants that accept MasterCard® debit cards. Best of all, there is no minimum balance requirement, no credit check, and no lengthy approval process.

How does it work?

- You receive a flexible, multi-use payroll card instead of a paper check.
- Each payday, your funds are added to your PayCard electronically, giving you faster access to your money.
- No more lost or damaged checks.
- You will be able to access all of your pay at no charge each pay period; however, fees may be associated with certain card transactions. Please see the Terms & Conditions and the Fee Schedule included in your card materials package and posted to myprepaidsolution.com for details on the fees applicable to your card.

Is cardholder customer service available?

Each month you receive one (1) general purpose operator assisted customer service call at no charge. Additional operator-assisted calls may result in a \$2.00 fee. Please see the Terms & Conditions and the Fee Schedule included in your card materials package and posted to myprepaidsolution.com for details on the fees applicable to your card.

Can I use a Wells Fargo ATM to access my pay?

Yes, you can access your pay using Wells Fargo ATMs with no surcharge. For non-Wells Fargo ATM withdrawals, additional fees may be assessed by the ATM owner. Please see the Terms & Conditions and the Fee Schedule included in your card materials package and posted to myprepaidsolution.com for details on the fees applicable to your card.

What does it cost?

Each time a payment is credited to the card, you receive one (1) Wells Fargo ATM withdrawal at no charge; subsequent transactions may result in fees to your card as described in the Fee Schedule to the Prepaid Card Solutions Terms and Conditions. These transaction fees and other fees that may be applicable to your card are listed below:

Signature point-of-sale purchase:	No Charge
Over-the-Counter cash back:	No Charge
PIN point-of-sale purchase:	No Charge
Domestic or international ATM withdrawal: (after one (1) domestic or international withdrawal per deposit at no charge; if there is no deposit, one (1) domestic or international withdrawal per month at no charge)	\$1.50*
International transaction: (percent based on total transaction amount)	3%
Card to account transfer: (percent based on total transaction amount)	1%
Live customer service call: (after one (1) call per month at no charge)	\$2.00
Secondary Card:	\$15.00
Manual check:	\$15.00
Domestic card replacement: (after one (1) replacement per year at no charge)	\$15.00
Express delivery of domestic card replacement:	\$15.00

NOTE: The fees listed above may differ from the fees applicable to your card; refer to the Fee Schedule to the Prepaid Card Solutions Terms and Conditions when you receive your card for the listing of fees that apply to your card.

*For non-Wells Fargo ATM withdrawals, additional fees may be assessed by the ATM owner.

EXHIBIT 19: ARIZONA



Schedule of Fees

Revised September 1, 2014

Purchases at Merchants	
Signature-based Purchase at Visa Merchants**	No Fee
Pinned POS Purchase at Merchant (Including cash back transactions)	No Fee
ATM Fees*	
ATM Withdrawal Domestic	No Fee at Bank of America ATMs \$1.50 for all others
ATM Withdrawal International	\$3.50
ATM Balance Inquiries	No Fee
ATM Transaction Decline	No Fee
Visa Bank Teller Access	
Cash Access (limited to available balance only) (via Visa bank locations)	No Fee
Other Service Fees	
Monthly Maintenance	No Fee
Online Funds Transfer	No Fee
Emergency Cash Transfer for Remaining Account Balance (under \$20.00)	1 free per year
Emergency Cash Transfer Domestic	\$15.00
International Transaction	2% of U.S. Dollar amount of transaction
Automated Customer Service Inquiry	No Fee
Live Customer Service Inquiry	No Fee
Card Replacement Domestic	1 waived each year, \$2.50 thereafter
Card Replacement – Express Delivery (additional charge)	\$15.00
Card Replacement International	\$15.00
Negative Balance	No Fee
PIN Changes	No Fee
Duplicate Statement	No Fee
Check Issuance	No Fee
Legal Process	\$100.00 (or such other amount as may be set by law)

Fees for CashPay transactions will be charged to your account daily.

* ATM owners may impose an additional "convenience fee" or "surcharge fee" for certain ATM transactions (a sign should be posted at the ATM to indicate additional fees); however, you will not be charged any additional convenience or surcharge fees at a Bank of America ATM. A Bank of America ATM means an ATM that prominently displays the Bank of America name and logo. Balance inquiries may not be available at all ATMs outside the U.S.

This card is issued by Bank of America, N.A., pursuant to a license from Visa U.S.A. Inc.
Bank of America, N.A. Member FDIC.

©2014 Bank of America Corporation

EXHIBIT 22: KANSAS

Exhibit A

AGREEMENT BETWEEN SKYLIGHT FINANCIAL, INC. AND THE STATE OF KANSAS FOR

PAYROLL DEBIT CARD SERVICES

PAYCARD FEE SCHEDULE

Account Enrollment Maintenance.	
Description	Transaction Fee
Initial Card Issuance	No Charge
Monthly Account Maintenance	No Charge
Point of Sale Transactions	
Description	Transaction Fee
Point of Sale Transaction – Signature Based	No Charge
Point of Sale Transaction – PIN Based	No Charge
Cash Withdrawal Transactions	
Description	Transaction Fee
Vendor ATM	\$1.50—The first ATM withdrawal per pay period is provided to State of Kansas employees at no cost. Employees will be assessed a fee of \$1.50 per transaction, after the one (1) free per pay period.
Non-Vendor ATM	\$1.50—The first ATM withdrawal per pay period is provided to State of Kansas employees at no cost. Employees will be assessed a fee of \$1.50 per transaction, after the one (1) free per pay period.
Vendor Teller Based Withdrawal	No Charge
Non-Vendor Based Withdrawal	No Charge
Cash Back at Point of Sale	No Charge
Customer Service and Miscellaneous Fees	
Description	Transaction Fee
Unlimited Web-Based Account Access	No Charge
Unlimited IVR-Based Account Access	No Charge
Live Representative Account Access	No Charge
Vendor ATM Balance Inquiries	\$1.00
Non-Vendor ATM Balance Inquiries	\$1.00
Monthly Electronic (Web-Based) Statement	No Charge
Monthly IVR-based statement	No Charge
Account Overdraft	\$25.00
Monthly Inactivity	\$5.00 – Assessed after 120 days of continuous inactivity.
Standard Card Replacement	\$7.00—One free per year, delivered regular mail.
Reissued Card Replacement	\$7.00—One free per year, delivered regular mail. Some card replacements may require exceptional handling and additional fees may apply.
Declined ATM/POS Transactions	\$1.00
Account Closing Transactions	\$10.00 Check Issuance Fee
Joint Account for all Cardholders who opt to use this service.	No Fee.

EXHIBIT 23: MISSOURI

Description	New UMB Paycard	UMB	Central
Branded Card	Visa	Visa	Mastercard
Each Account is FDIC Insured	Yes	Yes	Yes
Online Statement	Free	Free	Free
Paper Statement	Free	\$2.50 monthly fee	\$1.50 monthly fee
Employee can access entire check in one transaction	Yes/ many ways free of charge	Yes/Free	Yes/Free
In Network ATM Withdrawals	Free	Free	1.75*
Out of Network ATM Withdrawals	\$1.75 + additional fee of ATM owner	\$1.75 + additional fee of ATM owner	\$1.75* + additional fee of ATM owner
International ATM Withdrawals	\$2.00 + additional fee of ATM owner	\$2.50 + additional fee of ATM owner	\$3.50* + additional fee of ATM owner
Point of Sale (POS) Transaction using a PIN	Yes/Free	Yes/\$0.25 transaction fee	Free
Cash Back at POS	Yes/Free	Yes/Free	Yes/Free
Signature POS	Yes/Free	Yes/Free	Free
Toll Free Customer Service phone	Yes/Free	Free IVR	Free Live Agent
Monthly Maintenance	No	No	No
Overdraft Fee	\$25.00 - optional, cardholder must opt in to utilize this service and it is limited to one per pay cycle	N/A	No
Paper Check Access	Yes/Free	Yes/Free	N/A
Post Office Money Order Fee	Yes/Free	Yes/Free	Free + USPS fee
ACH Transfer to a Checking Account	Yes/Free	Yes/Free	\$1.50*
Over the Counter Cash Advance	Yes/Free	Yes/\$5.00 fee for each transaction	\$5.00*
Interactive Voice Response (IVR)	Free	Free	\$0.50 transaction fee if not the first 2 transactions in that pay cycle
Secured Web Site Access	Free	Free	Free
Wage Statement Access	No	No	Free
Card Replacement	Free	\$10.00 Each	\$5.00
Stop Payment	\$15.00	\$15.00	N/A
Live Operator Assistance	Free	\$1.00 per call	Free
ATM Inquiries/Transaction Denials	\$1.25	\$1.25	\$0.50
Inactivity Fee	\$5.00 - assessed after 60 days of zero debits or credits	N/A	\$2.95 - assessed at 180 days of zero debits or credits
			*First cash withdrawal transaction (ATM w/d, Cash Advance or ACH) is Free following each payload

Fees are subject to change without advance notice.

EXHIBIT 24. NEBRASKA**AccelaPay Fee Schedule**

Activity	Cost	Description
Monthly Account Maintenance	Free	Monthly account maintenance.
Purchases at Visa Point-of-Sale	Free	Purchases made by signature or PIN-based transactions.
Cash Back with Purchases	Free	Cash back with purchases at participating merchants.
Teller Cash Withdrawal	Free	Cash withdrawals from a teller at a financial institution.
ATM Withdrawal	U.S. Bank ATM – Free MoneyPass® ATM – Free Other ATM – \$1.25	Cash withdrawals at an ATM. Note: the owner of a non-U.S. Bank ATM or non-MoneyPass ATM may assess a surcharge fee on any ATM transaction you complete. The first cash withdrawal per month from any non-U.S. Bank ATM or non-MoneyPass ATM will be free.
Customer Service Via www.accelapay.com	Free	Log in to see Card information, Card activity, view statements and change PIN.
Automated Interactive Voice Response (IVR)	Free	Calls to Customer Service in which you utilize the automated service.
Live Customer Service Representative	Free	Calls to Customer Service in which you speak to a live customer service representative.
Alert Message – email or text	Free	Account alert messages. Standard messaging charges may apply through your mobile carrier and message frequency depends on account settings.
Monthly Paper Statement	Free	Statements can be accessed over the Internet at no cost.
Inactivity	\$2.00 Per Month	If the account is inactive for 270 days, on the 271st day and effective the next calendar month and each month the account is inactive thereafter, a charge will be assessed against the remaining value in your Card account.
Secondary Card	\$5.00	A second Card issued in the name of another trusted person to access the funds on your account.
Card Replacement - Standard	Free	Standard processing (3-5 business days) of a replacement Card due to being lost or stolen.
Card Replacement - Expedited	\$15.00	Expedited processing (2 business days) of a replacement Card due to being lost or stolen.
Funds Transfer	\$2.00	A fee to transfer money from your Card to a checking or savings account.
Foreign Transaction	Up to 3% per transaction	A fee charged on a transaction in which the merchant is located in a country other than the U.S. or processes transactions outside of the U.S.

We reserve the right to change the above fee schedule upon written notification to you.

Transaction Limitations**A. Limitations on frequency of transfers:**

- (i) You may make only 10 cash withdrawals from an ATM each day.
- (ii) You may make only 2 cash advances from a financial institution each day.
- (iii) You can use our point-of-sale transfer service for 10 transactions each day.
- (iv) You can use our point-of-sale transfer service using a PIN for 10 transactions each day.

B. Limitations on dollar amounts of transfers:

- (i) You may withdraw up to \$1,000.00 from an ATM each day.
- (ii) You may withdraw up to \$1,000.00 from a financial institution each day.
- (iii) You may buy up to \$3,000.00 worth of goods or services using our point-of-sale service each day.
- (iv) You may buy up to \$2,000.00 worth of goods or services using our point-of sale transfer service with a PIN each day.

Card Usage Tips:

Gas Stations: When purchasing gasoline at a gas station using the pay-at-the-pump option, a maximum hold of \$75 will be placed on your account to initiate your transaction. This amount will be held until the actual transaction amount clears. If you do not want funds held while waiting for the transaction to clear, please pay the cashier inside for your gasoline purchase. Payments made inside clear for the actual transaction amount immediately.

Restaurants, Salons and Other Services: Prepaid Card transaction posting amounts may vary. Most restaurants, salons and other services where you typically tip may temporarily add approximately 20% to your bill to cover the tip. Make sure your balance can cover the 20% or your transaction will be declined.

Hotels: When making travel reservations with a hotel or similar merchant, ask for the amount of the authorization they will send to your account. These merchants may send an initial authorization amount equal to your entire stay or rental period, plus taxes and incidentals, even though your actual purchase will be weeks or months away.

Track your Balance: It is always important to know your balance before you make a purchase or cash withdrawal and to keep track of your remaining balance after these transactions.

State of New Hampshire CashPay[®] Schedule of Fees

Effective ~~November 22, 2011~~ August 24, 2014

Company

Enrollment –	
Account owner electronic enrollment	Waived
Web application monthly access fee	Waived
Funding –	
ACH funding	No CashPay fee – Standard ACH per-item fee
Web exception funding (optional)	Waived

Account owner – Complete fee schedule

Monthly fees –	
Monthly maintenance	Waived
ATM and purchase transaction fees –	
Bank of America ATM withdrawal domestic*	Waived
Non-Bank of America ATM withdrawal domestic*	One free per week, \$1.50 thereafter
ATM withdrawal international	\$3.50 each
ATM balance inquiries**	Waived
ATM transaction decline	One free per week, \$0.50 thereafter No Fee
Signature-based purchase at Visa merchants***	Free
Pinned POS purchase (Visa card only)	Waived
Pinned POS purchase (ATM card only)	Free
Other service fees –	
Automated customer service inquiry	Waived
Live customer service inquiry domestic	Waived
PIN changes	Waived
Emergency cash transfer domestic	\$15.00
Emergency cash transfer international	\$30.00
Cash access (limited to available balance only)***	One free per week, \$5.00 thereafter No Fee
Online Funds Transfer	Waived
Card replacement domestic	\$5.00 free per year, \$5.00 thereafter
Card replacement – Express delivery (additional charge)	\$15.00
Card replacement international	Quote provided at time of request, as price varies by country
International transaction fee	Two percent of U.S. dollar amount of transaction
Account closure fee (check issued)	\$5.00
Legal process fee (check issued)	\$100.00 (or such amount as may be set by law)

*ATM owners may choose to charge an additional convenience fee or surcharge (a sign should be posted at the ATM to indicate additional fees); however, ATMs displaying Bank of America signs will not charge any additional surcharge to CashPay cardholders.

**Balance inquiries may not be available at all ATMs outside the United States.

***This feature is only available with the CashPay Visa card.

EXHIBIT 26: NEW JERSEY

Bank of America issues the Cash Pay Card to State employees. The following are fees associated with usage of the card:

- a. Purchase at Merchants (signed or using PIN, online, phone, or mail purchases): No Fee
- b. Bank of America ATM Withdrawal Domestic: No Fee
- c. ATM Balance Inquires (all ATMs): No Fee
- d. Declined Transaction (ATMs only): No Fee
- e. Online, Automated, Live, or International Customer Service Inquiry: No Fee
- f. Online Funds Transfer: No Fee
- g. Account Alert Service: No Fee
- h. PIN Changes: No Fee
- i. Non-Bank of America ATM Withdrawals: 2 waived each month; \$1.00 per transaction thereafter
- j. ATM Withdrawal International: \$3.00 per transaction
- k. Teller Cash Access (Available at financial institutions that accept VISA cards & limited to available balance only): 1 waived per week, \$4.00 thereafter
- l. Emergency Cash Transfer for remaining account balance (under \$20.00): 1 waived per year
- m. Emergency Cash Transfer Domestic: \$15.00 per transaction
- n. Emergency Cash Transfer International: \$30.00 per transaction
- o. Card Replacement Domestic: No Fee for the first replacement each year, \$5.00 thereafter
- p. Card Replacement – Express Delivery (additional charge): \$15.00 per request
- q. Card Replacement International: Quote provided at time of request, as price varies by country
- r. International Transaction Fee: 2% of US dollar amount of transaction
- s. Check Issuance Upon Account Closure: \$5.00 per request
- t. Legal Process Fee: \$100.00 (or such other amount as may be set by law)

EXHIBIT 27: OHIO**PAYWORKS PAYROLL DEBIT CARD
SCHEDULE OF FEES**

EMPLOYEE FEES *	
Monthly Fees:	
Monthly Account Maintenance Fee	\$2.00
Cardholder Transaction Fees:	
• ATM Withdrawal (KeyBank ATM)	Free
• ATM Withdrawal at Non-KeyBank ATM	\$1.50
• ATM Balance Inquiry	\$0.35
• Cash Advance Fee	Free
• Non-PIN (signature) POS Transaction Fee	Free
• Point of Sale (POS) Transaction Fee	\$0.25
Other Fees:	
• Voice Response Unit (VRU) Calls (Four free calls per month)	\$0.35 per call after 4th
• Duplicate Statement Fee	\$3.00
• Issuance Fee	\$5.00
• Additional Card Fee	\$5.00
• Card Replacement Fee	\$5.00
• Account Closure Fee	\$5.00
• Research Fee	\$15.00 per hour
• Legal Process Fee (i.e., garnishment, judgments, etc.)	\$40.00

* Monthly maintenance fee and cardholder transaction fees are debited directly from the cardholder's account.

All fees are subject to change without notice.

A valid government-issued identification with photo and signature is required when you submit your enrollment form. Some examples of acceptable government-issued photo identification include:

- a valid state-issued driver's license
- a valid Utah Drivers Privilege card (within state of Utah only)
- a valid state-issued non-driver's license photo identification
- a valid passport
- a valid military ID card
- a valid military dependent pass
- a valid INS (immigration) card
- a valid Native American (tribal) ID (some do not have a signature)
- a valid Mexican Matricula Consular card
- a valid Mexican driver's license
- a valid Canadian license

KeyCorp Internal
Effective July 2007
v1.0

EXHIBIT 28: OKLAHOMA

HERE IS YOUR STATE OF OKLAHOMA DIRECT PAYMENT CARD

JOHN M CARDHOLDER
 1234 MAIN ST
 ANYTOWN, CO 00000

You must activate your card, select a PIN and sign the back before you can use it.

Activate your card right now!

Log on to:

www.ucard.chase.com

or call:

1-866-444-4283

FEES FOR USING YOUR CARD

At Automated Teller Machines (ATMs)	
Cash Withdrawal (Daily limit: \$800)	Free at Chase, Allpoint and MoneyPass ATMs 2 free per deposit at other ATMs, then \$1.00 each
Balance Inquiry	Free
At Banks or Credit Unions	
Teller-assisted Cash Withdrawal	Free

OTHER FEES

Card Replacement – standard	Free
Card Replacement – expedited	\$15.00 per card
Inactive Account (after 365 days without use)	\$1.50 per month
International Transaction	3% of transaction
Funds Transfer to any Checking or Savings Account in the U.S.	Free to a Chase Account, \$0.50 each to other accounts
Online Bill Payment at www.myaccount.chase.com	\$0.25 per bill payment

See the enclosed Disclosure Statement and User Agreement for specific details.

Use your card without paying a surcharge at these ATMs:



www.ucard.chase.com www.allpointnetwork.com www.moneypass.com

HOW TO ACCESS AND MANAGE YOUR MONEY WITHOUT PAYING FEES

Why pay fees when you don't have to? Here are some ways you can use your card to access and manage your money without paying fees.

RETAIL LOCATIONS

- Unlimited **FREE** transactions when you use your card at merchants across the U.S.
- Unlimited **FREE** cash back with a purchase at supermarkets and other stores



AUTOMATED TELLER MACHINES (ATMS)

- **FREE** cash withdrawals and balance inquiries at Chase, Allpoint and MoneyPass ATMs
- No surcharges at Chase, Allpoint and MoneyPass ATMs



UCARD CENTER WEBSITE

- Check your balance for **FREE** anytime
- View and download monthly statements for **FREE**



WWW.UCARD.CHASE.COM

AccelaPay Fee Schedule – Effective [February 15, 2012]

Activity	Cost	Description
Monthly Account Maintenance	Free	Monthly account maintenance.
Purchases at Point-of-Sale	Free	Purchases made by signature or PIN-based transactions.
Cash Back with Purchases	Free	Cash back with purchases at participating merchants.
Teller Cash Withdrawal	Free	Cash withdrawal from a teller at a financial institution.
ATM Withdrawal	U.S. Bank ATMs – Free Other ATMs – 2 Free per month, \$2.00 each thereafter	Cash withdrawals at an ATM. Note: The owner of a non-U.S. Bank ATM may assess a surcharge fee on any ATM transaction you complete.
ATM Balance Inquiry	Free	Balance inquiries at an ATM.
Customer Service Via www.accelapay.com	Free	Log in to see Card information, Card activity, view statements and change your PIN.
Automated Interactive Voice Response (IVR)	Free	Calls to Customer Service in which you utilize the automated service.
Live Customer Service Representative	Free	Calls to Customer Service in which you speak to a live customer service representative.
Alert Message – email or text	Free	Account alert messages. Standard messaging charges may apply through your mobile carrier and message frequency depends on account settings.
Monthly Paper Statement	Free	Monthly paper statements requested by mail. Statements can also be accessed over the Internet at no cost.
Inactivity	\$2.00 Per Month	If the account is inactive for 365 days, on the 366th day and effective the next calendar month and each month the account is inactive thereafter, a charge will be assessed against the remaining value in your Card account. An account is inactive if there have been no transactions performed using the card.
Card Replacement - Standard	Free	Standard processing (3-5 business days) of a replacement card due to being lost or stolen.
Card Replacement - Expedited	\$15.00	Expedited processing (2 business days) of a replacement card due to being lost or stolen.
Foreign Transaction	Up to 3% per transaction	A fee charged on a transaction in which the merchant or ATM is located in a country other than the U.S. or processes transactions outside of the U.S.

We reserve the right to change the above fee schedule upon written notification to you.

Transaction Limitations**A. Limitations on frequency of transfers:**

- (i) You may make only 10 cash withdrawals from an ATM each day.
- (ii) You may make only 2 cash advances from a financial institution each day.
- (iii) You can use our point-of-sale transfer service for 10 transactions each day.
- (iv) You can use our point-of-sale transfer service using a PIN for 10 transactions each day.

B. Limitations on dollar amounts of transfers:

- (i) You may withdraw up to \$1,000.00 from an ATM each day.
- (ii) You may withdraw up to \$1,000.00 from a financial institution each day.
- (iii) You may buy up to \$3,000.00 worth of goods or services using our point-of-sale service each day.
- (iv) You may buy up to \$2,000.00 worth of goods or services using our point-of sale transfer service with a PIN each day.

Card Usage Tips:

Prepaid Card transaction posting amounts may vary. Most restaurants, salons and other services where you typically tip may temporarily add approximately 20% to your bill to cover the tip. Make sure your balance can cover the 20% or your transaction will be declined.

When making travel reservations with a hotel or similar merchant, ask for the amount of the authorization they will send to your account. These merchants may send an initial authorization amount equal to your entire stay or rental period, plus taxes and incidentals, even though your actual purchase will be weeks or months away.

It is always important to know your balance before you make a purchase or cash withdrawal and to keep track of your remaining balance after these transactions.



EXHIBIT 30: SOUTH DAKOTA

5. Cardholder Fees	
By accepting and using the Card, you are responsible for the following fees which will be deducted automatically from the Card Value at the time the fee is incurred unless (i) there is insufficient Card Value remaining, in which case you must mail payment to us, or (ii) the fees are paid directly by Company.	
Card Issuance Fee:	\$5.95 This fee may be charged at the time of issuance, both initial issuance and when re-issued due to lost, stolen, etc.
Card Usage Fees: *ATM and Cash Advance Fee:	\$0.00 per transaction. * If you use an ATM, you may be charged a fee by the ATM operator including a fee for a balance inquiry even if you do not complete a withdrawal.
Foreign Currency Transaction Fee:	Three percent (3%) of the transaction amount.
Special Service Fees: Balance Inquiry and Transaction History:	This information is FREE online at www.premieraccesscard.com .
Special Statement Copy Fee:	\$3.00 per request for a paper copy of a prior statement.
Close Card and Issue Check Fee:	\$15.00 will be deducted from your remaining Card Value if you choose to receive a check for the liquidation of the Card Value.
Card Research and Special Requests:	Should you request that we perform research or handle special requests relating to the Card, there will be a charge of up to \$25 per hour for each request. Should your request be the result of a billing error or unauthorized transaction, this service is free of charge.
Other Fees: Dormancy Fee:	Card will close automatically after 12 months of no activity. A \$15.00 fee is assessed at this time and the remaining balance will be mailed to the cardholders address.

EXHIBIT 31: TEXAS

Schedule of Bank Fees

Bank fees for TexPayCard transactions will be charged to your Account daily.

Monthly Fees	
Monthly Maintenance	No fee
ATM & Purchase Transaction Fees*	
Bank of America ATM Withdrawal Domestic	No fee
Non-Bank of America ATM Withdrawal Domestic	3 waived per month, \$1.50 for all others
ATM Withdrawal International	\$3.50
ATM Balance Inquiries	No fee
ATM Transaction Decline	1 waived per week, \$0.50 thereafter
Signature-Based Purchase at Visa Merchants	No fee
Pinned POS Purchase	No fee
Other Service Fees	
Automated Customer Service Inquiry	No fee
Live Customer Service Inquiry	No fee
International Customer Service Inquiry	1 waived per month, \$5.00 for each additional call
PIN Changes	No fee
Emergency Cash Transfer	\$15.00
Cash Access (limited to available balance only)	3 waived per month, \$5.00 thereafter
Online Funds Transfer Fee	No fee
Card Replacement Domestic	1 waived per year, \$5.00 thereafter
Card Replacement - Express Delivery (additional charge)	\$15.00
Card Replacement International	Quote provided at time of request, as price varies by country
International Transaction Fee	2% of U.S. Dollar amount of transaction
Account Closure Fee	\$5.00
Legal Process Fee	\$100.00 (or such other amount as may be set by law)

*ATM owners may impose an additional "convenience fee" or "surcharge fee" for certain ATM transactions (a sign should be posted at the ATM to indicate additional fees); however, you will not be charged any additional convenience or surcharge fees at a Bank of America ATM.

A Bank of America ATM means an ATM that prominently displays the Bank of America name and logo. Balance inquires may not be available at all ATMs outside the U.S.

EXHIBIT 32: UTAH

HERE IS YOUR UTAH UCARDSM

FO, ...M Ct + D,, O DE#
 1%64 Mt + ...ST
 † ..CFOŽ ..., UT 00000

You must activate your card, select a PIN and sign the back before you can use it.

Activate your card right now!

Log on to:

www.ucard.chase.co,

or call †

1 # 1 8 0 0 0 0 0 0 0 0

See the enclosed Disclosure Statement and User Agreement for specific details.

FEEES FOR USING YOUR CARD

At Stores	
Food Stamp Purchases	Free
Cash Payment Purchases	Free
At Auto, ated Teffer Machines ,ATMs...	
Cash withdrawal -Daily limit† Y00-	1 free per deposit, then † 1.0 each -some AZM owners may also charge an AZM surcharge. there are no surcharges at Chase or † ions ank AZMs-
Balance Inquiry	† 0.0 each -free online or by phone-
At † ans or Credit Unions	
Zeller-assisted Cash withdrawal	1 free per deposit, then † 1.00 each
At Pro iders ,Child Care or E, pfoy, ent & Training...	
Payment to Approved Provider	Free -PSS or lq" -
On the Internet ,www.ucard.chase.co, ...	
Funds Transfer to any Checking or Savings Account in U.S.	Free to a Chase account † 0.0 each to other accounts
Online Bill Payment	† 0.0 each

OTHER SUPPORT FUNDS/CASH ACCOUNT FEES

Transaction Denied for Insufficient Funds	† 1.00 per transaction
Card "replacement" standard	1 free per year, then † 1.0 each -no fee for food stamp recipients-
Card "replacement" expedited	† 10.00 plus cost of card
Account Statement "mail -optional-	† 1.00 per month -free online-
Inactive Account -after 90 days without use-	† 1.0 per month
International Transaction	† % of transaction
International AZM " withdrawal	† 1.00 each
International AZM " balance Inquiry	† 1.0 each

Use your card without paying a surcharge at these ATMs:



www.ucard.chase.com

www.zionsban, .com

DEPOSIT ISSUANCE SCHEDULES

All deposits to your UCard will occur on a regular schedule.

TEMPORARY ASSISTANCE

Food Stamp benefits will be issued on the 1st, 11th and 15th days of the month... your specific date is based on the first letter of your last name†

A#f. th
 %S11th
 P#15th

All Monthly Financial and Child Care benefits will be issued on the first day of the month after 6:00 a.m. Mountain Time.

EMPLOYMENT & TRAINING

Employment & Training payments are issued on an individual basis as negotiated with your employment counselor.

UNEMPLOYMENT INSURANCE

Unemployment Insurance payments are generally available two business days after an eligible weekly claim is filed.

WWW.UCARD.CHASE.COM

EXHIBIT 33: VIRGINIA

Enjoy the Benefits of Your New Virginia Debit MasterCard®

Activate Your New Virginia Debit MasterCard® Right Away

Select your Personal Identification Number (PIN) by calling the toll free number:

- Enter your card number, when prompted.
- Enter the last four digits of your Social Security Number.
- Enter your date of birth, MMDDYYYY. (Example: 10011960).
- Select a four digit PIN. Enter it a second time to verify.

Remember your PIN! You must have your PIN to use your card.

Sign your name in ink on the back of your card.

Read the enclosed Terms of Use to know your rights and responsibilities as a cardholder.

Funds will not be available on your card until a payment is made to your account.

Customer Service
Call 1-800-961-8423 (toll free)
 24 hours a day / 7 days a week

Do Not Throw this Card Away!

Important ATM Safety Tips

Keep your Personal Identification Number (PIN) a secret. Never write it down anywhere, especially on your ATM card.

Have your ATM card out and ready to use as you approach the ATM.

Be aware of your surroundings. If you observe or sense suspicious persons or circumstances, do not use the machine at that time.

Exercise extra caution at night. Whenever possible, bring a friend.

Always take your receipts or transaction records with you.

Replacement Card—You Must Select Your PIN Again

Choose the same PIN or enter a new one

Be sure to destroy your old card; it no longer works

New MoneyPass ATM locations

You are allowed five (5) free ATM cash withdrawals only at MoneyPass ATM locations.

MoneyPass ATMs are surcharge free as well.

Look for the MoneyPass Network Logo.

Other ATMs will charge a fee for using their locations.



ATM Surcharge Fees

Some bank ATMs will apply an additional fee called a surcharge to use their ATM. You can avoid this fee by looking for these logos:



Always read the ATM messages carefully. You can cancel if you wish to avoid the fee or press enter and pay the fee.



The Virginia Debit MasterCard is issued by Comerica Bank, N.A. pursuant to a license by MasterCard International Incorporated.

Fee Table

Deposit Notification * - Email, phone or text message	Free	Paper Statement of Account Activity - Request via Customer Service Representative	Free
Low Balance Alert *	Free	Account access via IVR (telephone) or operator assisted telephone calls	Unlimited calls
Purchases at point-of-sale (POS) locations (PIN or signature)	Unlimited free	Web-based Account Access	Unlimited free
Cash back with purchase	Unlimited free	Instant Mobile Alert Request * - Coming in 2011	Free
ATM cash withdrawal at MoneyPass ATMs - Five (5) "FEE-FREE" each month	\$1.45 each after five (5) free are used	Bill Pay via merchant website	Unlimited free
ATM cash withdrawal at ATMs other than MoneyPass locations	\$1.45 each	Bill Pay via www.eppicard.com website	\$0.50 each
ATM balance inquiry at MoneyPass ATMs - One (1) "FEE-FREE" each month	\$0.50 each after one (1) free used	Replacement Card - Initial card issuance "FEE-FREE" - One (1) free replacement during the three year expiration period	\$5.00 each after one (1) free used
ATM balance inquiry at ATMs other than MoneyPass locations	\$0.50 each	Express card delivery - Two-day deliver, business days only	\$15.00
ATM Denials for insufficient funds - Two (2) "FEE-FREE" each month	\$0.50 each after two (2) free used	Interactive Voice Response (IVR-phone) funds transfer to another bank account	\$1.50
Bank teller cash withdrawal - Two (2) "FEE-FREE" each month at MasterCard bank locations	\$2.50 each after two (2) free used	International ATM withdrawal fee	\$1.50 each
Monthly account inactivity - Charged only after 14 months of inactivity	\$1.25 each month	International transaction fee - Added to both ATM and POS transactions	2% of U.S. dollar amount of transaction

* Your carrier may charge you a fee for phone or text message delivery depending upon your cellular service plan.

EXHIBIT 34: WASHINGTON

CashPay® Schedule of Fees – State of Washington

State (Employer)

Enrollment –

Account owner electronic enrollment *waived*
 Web application monthly access fee *waived*

Funding –

ACH No CashPay fee – Standard ACH per-item fee
 Web exception funding (optional) *waived*

Account owner (Employee) – Complete fee schedule

Monthly fees –

Monthly maintenance *waived*
 ATM and purchase transaction fees –
 ATM withdrawal domestic* One free per week at Bank of America ATMs, \$1.50 for all others
 ATM withdrawal international \$3.50 each
 ATM balance inquiries** *waived*
 ATM transaction decline One free per week, \$0.50 thereafter
 Signature-based purchase at Visa merchants*** Free
 Pinned POS purchase (Visa card only) *waived*

Other service fees –

Automated customer service inquiry *waived*
 Live customer service inquiry One free each month, \$1.50 for each additional call
 International customer service inquiry One free each month, \$5.00 for each additional call
 PIN changes *waived*
 Emergency cash transfer for remaining account balance (under \$20.00) One free per year
 Emergency cash transfer domestic \$15.00
 Emergency cash transfer international \$30.00
 Cash access (*limited to available balance only*)*** *Two free each month, \$5.00 for each additional*
 Enrollment via telephone or Internet \$7.00
 Card replacement domestic \$5.00
 Card replacement – Express delivery (additional charge) \$15.00
 International transaction fee Two percent of U.S. dollar amount of transaction
 Negative balance fee \$15.00
 ACH debits for bill payments *waived*
 Duplicate statement *waived*
 Account closure fee (check issued) *waived*

All account-owner fees may be paid by the company. For the non-Visa card, there is no charge for pinned POS purchases and the monthly fee is \$2.00 for each account owner per month. Note: All account-owner fees are subject to review and change.

*ATM owners may choose to charge an additional convenience fee or surcharge (a sign should be posted at the ATM to indicate additional fees); however, ATMs displaying Bank of America signs will not charge any additional surcharge to CashPay cardholders.

**Balance inquiries may not be available at all ATMs outside the United States.

***This feature is only available with the CashPay Visa card.

1 Member FDIC. ©2007 Bank of America Corporation. Bank of America, N.A.

EXHIBIT 35: WEST VIRGINIA

00000370958/50000011808

THE WEST VIRGINIA PAY CARD is a reloadable Visa® prepaid card issued by Citibank, N.A.

SCHEDULE OF SUPPLEMENTAL TERMS

CONTACT INFORMATION

Our Site: www.prepaid.citi.com/wv
 Our Telephone Number: 800-669-4396
 Our Address: Citi Prepaid Services Customer Service, P.O. Box 284, Conshohocken, PA 19428
 Our Email Address: prepaidhelp@citi.com

ADDITIONAL FEATURES AVAILABLE TO YOU

In addition to the Transactions identified elsewhere in the Agreement, you can use your West Virginia Pay Card for the following features:

PIN DEBIT PURCHASES: You may use your West Virginia Pay Card to complete Transactions at merchants that accept Network-branded debit cards using your PIN. You are responsible for the protection of your PIN number and you will not be able to recover funds lost as a result of the unauthorized use of your PIN.

PROTECTING YOUR PIN: In order to keep your West Virginia Pay Card balance secure, you must strictly protect the confidentiality of your PIN. If you believe that your PIN is no longer secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of your PIN), you must immediately notify Customer Service. You agree not to write your PIN on your West Virginia Pay Card or keep a notation of your PIN with your West Virginia Pay Card.

ATM WITHDRAWALS: You may use your West Virginia Pay Card to withdraw cash at ATMs that accept Network-branded cards.

ACH WITHDRAWALS: You may debit funds from your West Virginia Pay Card and have those funds electronically transferred to your checking or savings account via ACH (a "Special Transfer"). You may initiate Special Transfers by logging onto Our Site or contacting Customer Service, and by providing us the information we request and following our instructions.

LOADING FUNDS TO YOUR WEST VIRGINIA PAY CARD: Each pay period, your employer will deposit your pay to your West Virginia Pay Card (a "Direct Deposit Transaction"). Any dispute as to the payment of your pay in a Direct Deposit Transaction, including the timing and the amount of the transaction, must be resolved between you and your employer. We are not responsible for such disputes.

LOADING FUNDS TO YOUR WEST VIRGINIA PAY CARD: If you have arranged to have direct deposits made to your West Virginia Pay Card at least once every 60 days from the same person or company, you can call us at Our Telephone Number or visit Our Site to find out whether or not the deposit has been made.

ADDITIONAL TERMS OF OUR AGREEMENT

WHEN FUNDS ARE AVAILABLE: If you receive funds on your Card through a Direct Deposit Transaction, our policy is to make funds transferred to your West Virginia Pay Card available to you on the date we receive the transfer, at the time we receive the transfer, regardless of whether that day is a Business Day. Once the funds are available, you can use them for all Transactions permitted in this Agreement.

REQUIRED INFORMATION: You must provide your real name, street address, e-mail address (if any), telephone number and such other information as may be reasonably requested by us to determine your eligibility for a West Virginia Pay Card. Falsification of any of this information constitutes grounds for termination of the West Virginia Pay Card.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OBTAINING A NEW WEST VIRGINIA PAY CARD: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. WHAT THIS MEANS FOR YOU: When you request or register for a West Virginia Pay Card, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

FDIC INSURANCE: The funds on your West Virginia Pay Card are FDIC-insured up to the limits provided by law.

SECONDARY CARDHOLDERS: You may request that we issue a secondary West Virginia Pay Card to a Secondary Cardholder designated by you. We may decline such a request in our sole discretion. If we issue a secondary West Virginia Pay Card to a Secondary Cardholder, you agree that the Secondary Cardholder may access and use the available card balance of your West Virginia Pay Card. You also authorize the Secondary Cardholder to establish a unique login and password in order to view the Transaction and Load history of both your West Virginia Pay Card and the secondary West Virginia Pay Card on Our Site. The Secondary Cardholder is not a joint owner of the West Virginia Pay Card, and you agree to pay for all Transactions made by the Secondary Cardholder, and all applicable fees and charges. You are responsible for modifying or changing all personal information and keeping it up to date. We have no obligation to accept any instructions from the Secondary Cardholder, however you authorize us to accept and follow the Secondary Cardholder's instructions in our sole discretion.

ACH TRANSFER AUTHORIZATION AND TERMS OF USE: The following terms apply to each transfer of value from your West Virginia Pay Card to a U.S. bank account.

ACH Transfers: When you attempt to transfer value from your West Virginia Pay Card to your U.S. bank account utilizing our ACH Transfer feature, you are requesting an electronic transfer to your bank account and are authorizing us to facilitate such transfers. Upon such request, we will make the electronic transfer via the Automated Clearing House (ACH) system from the funds available through your West Virginia Pay Card to your U.S. bank account in the amount you specify. You will be charged a service fee for all ACH transfers in accordance with the Fee Schedule set forth below. In order to transfer funds utilizing the ACH system, we require that you provide us with the following information: your bank name, your bank routing and transit number and your bank account number. You are providing us with this information subject to the terms of our Privacy Policy and you hereby warrant that all information is correct. We shall have no liability whatsoever if you fail to provide the correct information. We require this information to authenticate your identity and to initiate the ACH transfer. All requested funds will be transferred to the bank account on file. We may limit withdrawals and require additional information from you as disclosed in these Terms and Conditions. We reserve the right to perform authentication of the bank account and the individual initiating the ACH Withdrawal.

Remedies: Without limiting other remedies, we may update inaccurate or incorrect information you provide to us, contact you by means other than electronically, immediately warn our community of your actions, place a hold on funds on your West Virginia Pay Card, limit funding sources and payments, limit access to a Card and any or all of the Card's functions, limit Transactions, indefinitely suspend or close your Card and refuse to provide our services to you if: (a) you breach this Agreement or the documents it incorporates by reference, (b) we are unable to verify or authenticate any information you provide to us; (c) we believe that your account or activities pose a significant credit or fraud risk to us; or (d) we believe that your actions may cause financial loss or legal liability for you, us or others. In addition, we reserve the right to hold funds for Transactions we deem suspicious or for Cards conducting high transaction volumes, to ensure integrity of the funds. The rights described in this section are in addition to and apart from any other rights.

EXPIRATION DATE; AVAILABLE FUNDS DO NOT EXPIRE: While there is a card expiration date embossed on the front of your West Virginia Pay Card, the funds on your West Virginia Pay Card do not expire. You may not use your West Virginia Pay Card after the expiration date, but if you do not use the full amount on your West Virginia Pay Card by the expiration date, we may issue you a new West Virginia Pay Card automatically, or you can call customer service to request a new West Virginia Pay Card (the "Replacement Card"). The charge for issuing a Replacement Card is set forth in the Fee Table. Subject to applicable law and for valid reasons, we reserve the right to decline to issue a Replacement Card.

TRANSACTION LIMITS

Daily dollar limit for purchase transactions: \$3,000 or your established daily limit.
 Daily limit on number of purchase transactions: 12 or your established daily limit.
 Daily dollar limit for ATM transactions: \$1,000 or your established daily limit.
 Daily limit on number of ATM transactions: 10 or your established daily limit.
 Daily limit for bank teller withdrawal cash transactions: \$1,500 or your established daily limit.
 Daily limit on number for bank teller withdrawal cash transactions: 5 or your established daily limit.

We reserve the right to modify the Transaction Limits from time to time. We will notify you of any change in the Transaction Limits as may be required by law. For security purposes, we may impose additional Transaction Limits on your West Virginia Pay Card and you will be advised of such limitations to the extent required by applicable law.

Revised 08/2013

Test Display - Printer: JSHEIBAL

Template: B0000011808

Project: OTW041259

SCHEDULE OF FEES

Description	Fee
Point-of-Sale (POS) Transaction (Signature or PIN)	No Fee
In-Network Domestic ATM Withdrawal ¹	No Fee
Bank Teller Cash Withdrawal at Visa Member Banks	No Fee
ATM Balance Inquiry	No Fee
Monthly Paper Statement (Upon Request)	No Fee
Account Overdraft	No Fee
Pre-Check Usage	No Fee
ACH Transfer to Personal Bank Account	No Fee
First Card Replacement (Standard Delivery - Per Year)	No Fee
Out-of-Network Domestic ATM Withdrawal	\$1.95 per transaction
Point-of-Sale (POS) or ATM Decline	\$0.25 per incident
Card Replacement - Standard Delivery (After First Free)	\$3.95 per request
Card Replacement - Expedited Delivery	\$12.95 per request
Secondary Accountholder Card Request (If Applicable)	\$3.95 per request

¹ In-network ATMs include ATMs located at Citibank® branches, Publix® supermarkets, 7-Eleven® stores, MoneyPass® and Allpoint® branded ATMs. Out-of-network ATMs may impose charges for your transaction that are in addition to the ATM Fees listed above.

EXHIBIT 36: WISCONSIN

Program Pricing Schedule (Subject to Change)

Item/Activity	Fee
STATE	
Program Implementation Fee	\$0.00
Marketing Materials	\$0.00
Monthly Account Maintenance Fee	\$0.00
New Account Enrollment Fee	\$0.00
CARDHOLDERS	
Monthly Account Maintenance Fee	\$0.00
Point of Sale Fees	
VISA Signature-Based POS Transactions	\$0.00
Interlink PIN-Based POS Transactions	\$0.00
Cash Back with Purchase at Participating Interlink Merchants	\$0.00
Cash Withdrawal Fees	
Withdrawals at Contractor and MoneyPass-branded ATMs	\$0.00
Withdrawals at non-Contractor and non-MoneyPass-branded ATMs (ATM owner may levy a fee to the cardholder)	\$2.00
Withdrawals at any International ATM	\$3.00
Teller-Based Cash Withdrawals (at any VISA bank, not limited to Contractor)	One free per load, then \$3.00 thereafter
Customer Service and Miscellaneous Fees	
Customer Service – Online & Automated Phone Access (unlimited)	\$0.00
– Live Rep Calls (3 free calls per month)	\$3.00
Paper Statement Fees (if requested)	\$2.00
Monthly Inactivity Fee (Following 90 days of inactivity)	\$0.00
ATM Balance Inquiries – Contractor and MoneyPass ATMs	\$0.50
ATM Balance Inquiries – Non-Contractor and MoneyPass ATMs	\$1.00
ATM Balance Inquiries – At any International ATM	\$2.00
ATM Decline (Non-USB/Non-MoneyPass or International)	\$0.50
Add Secondary Cardholder	\$0.00
Remove Secondary Cardholder	\$0.00
Standard Card Replacement (3-5 business days)	\$5.00
Emergency Card Replacement (2 business days)	\$15.00
E-Mail Alert and Zero Balance and Negative Balance Text Message Alert*	\$0.00
Text Message Alerts*-- Address Change, Funds Added and Low Balance	\$0.00
Mobile Banking Transactions* -- Balance Inquiry and Mini-Statement	\$0.00
*Standard messaging charges may apply through cardholder's mobile carrier and message frequency depends on account settings.	
International transactions are subject to 3% currency conversion fee	